

2-3-42
No. 11988

United States
Court of Appeals
for the Ninth Circuit

SAM CATRINO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana

FILED

SEP 23 1948

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Missoula, Montana, and

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Hamilton, Montana.
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JOHN B. TANSIL,
United States Attorney, Billings, Montana.

HARLOW PEASE,
Asst. United States Attorney, Butte, Montana,
and

EMMETT C. ANGLAND,
Asst. United States Attorney, Butte, Montana,
Attorneys for Appellee and Plaintiff. [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States in and
for the District of Montana.

No. 6784

United States of America, Plaintiff, vs. Sam
Catrino, et al., Defendants.

Be It Remembered, that on March 13, 1948, an
Indictment was duly returned and filed herein in
the words and figures following, to-wit:

In the District Court of the United States
District of Montana, Missoula Division

No. 6784

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM CATRINO, JOHN A. REINHARD, and
JOHN DOE (whose true name is unknown, but
who is described as being in the company of
John A. Reinhard in the transaction hereinafter
narrated, and who is a white man aged about
25 years, about 5 feet ten inches in height and
weight about 145 pounds, and wearing a big cow-
boy hat and range clothing at the time men-
tioned).

Defendants.

INDICTMENT

The Grand Jury charges:

COUNT ONE

(Subornation of Perjury) (Title 18, 232)

The above named defendants, Sam Catrino, and John A. Reinhard, on or about March 13, 1946, at Missoula, in the District of Montana, and within the jurisdiction of this court, did unlawfully, corruptly and feloniously, procure one James B. Rennaker, to commit perjury as follows: The said defendants, Sam Catrino, and John A. Reinhard, were charged in the District Court of the United States for the District of Montana, with a crime against the sovereignty of the United States, to wit: violation of Section 241 of Title 25, U.S.C.A., viz., an unlawful sale of liquor to an Indian ward of the government, alleged to have been committed on October 20, 1945, at a saloon known as the Brunswick Bar in Missoula, Montana; said cause came on for trial on March 13, 1946; on and prior to [3] said date, the said defendants, Sam Catrino and John A. Reinhard, solicited, procured and caused the said James Rennaker to appear as a witness in the said United States District Court on March 13, 1946, upon the trial of said cause and to be by the Clerk of said Court sworn as a witness in said cause and to testify that he, the said James B. Rennaker, on the late evening of October 20, 1945, was in the said Brunswick Bar and there saw a Mexican person buy a quantity of wine at the bar of said saloon,

and deliver the same to one Pat A. Pierre; that said testimony so given was false and known by the Defendants Sam Catrino and John A. Reinhard and by the said James B. Rennaker, to be false; that in truth and in fact, said James B. Rennaker was not in said place, nor in the City of Missoula at the time referred to, to wit, the late evening of October 20, 1945, but was in or near the City of Butte, Montana, and that in truth and in fact, he did not see any person sell any wine or other liquor to the Indian ward, Pat A. Pierre, on October 20, 1945. [4]

COUNT TWO

(Obstruction of Justice: 18 USC 241)

The above-named defendants Sam Catrino and John A. Reinhard on or about March 13, 1946, at Missoula, Montana, in the District of Montana and within the jurisdiction of this Court, did unlawfully, corruptly and feloniously influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the District Court of the United States for the District of Montana, then in session and engaged in the trial of a cause entitled, "United States of America vs. Sam Catrino and John A. Reinhard," wherein said Defendants were charged with and being tried for a violation of section 241 of Title 25 of the United States Code, to wit: an unlawful sale of intoxicating liquor to Pat A. Pierre, an Indian ward of the United States; particularly in this, that said defendants did corruptly cause one James B. Rennaker to attend said trial and be sworn and

testify as a witness for the said Defendants to certain false statements, which said Rennaker and said Catrino and Reinhard knew to be false, to wit, testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1945, and there saw an un-named Mexican purchase a quantity of wine at the bar and deliver it to an Indian ward named Pat A. Pierre.

COUNT THREE

(Attempting to influence Witness: 18 USC 241)

The above-named defendants John A. Reinhard and Joe Doe (whose true name is unknown, but who is described as being in the company of John A. Reinhard in the transaction hereinafter narrated, and who is a white man aged [5] about twenty-five years, about five feet ten inches in height and weight about one hundred forty-five pounds, and was wearing a big cowboy hat and range clothing at the time mentioned), on or about October 20, 1945, in Sanders County, Montana, in the District of Montana and within the jurisdiction of this court, did unlawfully, corruptly and feloniously endeavor to influence one Pat A. Pierre, a witness in a cause entitled, "United States of America vs. Sam Catrino and John A. Reinhard," then pending in the United States District Court for the District of Montana, in which said Catrino and Reinhard were charged with unlawfully selling a quantity of wine to said Pat A. Pierre, an Indian ward of the United States, in that said Defendants corruptly offered said Pat A. Pierre a sum

of money as a bribe to procure him to testify that a bottle of wine, which was in fact sold to said Pierre by said defendant, John A. Reinhard, was sold to said Pierre by a Mexican, and stated to said Pierre that they would back him up in said false testimony:

A True Bill:

FRITZ NORBY,
Foreman.

JOHN B. TANSIL,
United States Attorney.

[Endorsed]: Filed March 13, 1948. [6]

Thereafter on June 4, 1948, a Motion to Dismiss the Indictment was duly filed herein, being in the words and figures following, to wit: [8]

[Title of District Court and Cause.]

MOTION

Comes now the Defendants and move the Court for an order dismissing the indictment on file herein, and allege and aver:

I.

That the first count of said indictment does not state facts sufficient to constitute an offense against the United States of America, or at all.

II.

That the second count of said Indictment does not state facts sufficient to constitute an offense against the United States of America, or at all.

III.

That the third count of said Indictment does not state facts sufficient to constitute an offense against the United States of America or at all.

Dated this 4th day of June, 1948.

GEORGE F. HIGGINS
and
DALTON T. PIERSON,
By GEORGE F. HIGGINS,
Attorneys for Defendants.

[Endorsed]: Filed June 4, 1948. [9]

Thereafter on July 2, 1948, the Oral Order of the Court denying the Motion to Dismiss the Indictment was duly entered herein, the minute entry of such order being in the words and figures following, to wit:

In the District Court of the United States in and for the District of Montana

[Title of Cause.]

Counsel for respective parties were present in Court this day, Mr. Harlow Pease, Assistant United States Attorney, appearing for the United States, and Mr. George F. Higgins appearing for the defendants.

Thereupon defendants' motion to dismiss the indictment, heretofore submitted to the Court, was by the Court overruled and denied, whereupon the defendants excepted to the ruling of the Court and

exception duly noted. Thereupon the defendants moved the Court for an order directing the United States Attorney to furnish them with a copy of the testimony and proceedings had before the grand jury which returned the indictment against them, whereupon Court ordered that said motion be and is denied.

Thereupon Court ordered that the defendants appear before the Court at 10:00 a.m. tomorrow for arraignment and plea.

Counsel for the defendants also made an objection to Counts 1 and 2 of the indictment, as being identical.

Entered in open Court at Missoula, Montana,
July 2, 1948.

H. H. WALKER,
Clerk. [11]

Thereafter on July 3, 1948, Motion of defendant Sam Catrino for separate trial was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

MOTION FOR SEPARATE TRIAL

Comes now the Defendant, Sam Catrino, and moves the Court that he be granted a separate trial

for the reason that the offenses charged are individual offenses.

J. D. TAYLOR,
By G. F. H.
GEORGE F. HIGGINS,
Attorney for Defendant.

**Service of true copy acknowledged this 3rd day
of July, 1948.**

.....

Assistant United States
Attorney.

[Endorsed]: Filed July 3, 1948. [13]

Thereafter on July 3, 1948, the Oral Order of the Court denying Motion for Separate Trial was duly entered herein, being as follows, to wit:

**In the District Court of the United States in and
for the District of Montana.**

[Title of Cause.]

Defendants were duly called for arraignment and plea this day, said defendants being personally present in Court with their attorney, Mr. George F. Higgins, and Mr. Harlow Pease, Assistant United States Attorney, being present and appearing for the United States.

Thereupon the defendants answered that their true names are, respectively, Sam Catrino, John Reinhard and Lester La Valley. Thereupon the defendants waived the reading of the indictment and

each defendant entered a plea of not guilty, whereupon Court set the case for trial for Wednesday, July 7, 1948. at 10:00 a.m.

Thereupon counsel for the defendants filed and presented to the Court a motion in behalf of each defendant for separate trial, whereupon Court ordered that the motions be and are denied, to which ruling of the Court the defendants then and there excepted and exceptions duly noted.

Thereupon, on motion of Mr. Higgins, Court ordered that the name of James D. Taylor be entered as associate counsel for the defendants.

Thereupon Mr. Higgins stated to the Court that the defendants Reinhard and LaValley are without means with which to procure witnesses needed by them, and moved the Court for an order to subpoena witnesses at the expense of the United States. Thereupon Court directed counsel to consult with the United States Attorney with the view of having any necessary witnesses subpoenaed, and for payment of their fees and mileage at the expense of the United States.

Entered in open Court at Missoula, Montana.
July 3, 1948.

H. H. WALKER,
Clerk. [15]

Thereafter on July 7, 1948, Motion to Sever Count Three from the Indictment was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

**MOTION TO SEVER THIRD COUNT FROM
INDICTMENT**

Comes now the Defendant, Sam Catrino, and moves the Court that Count No. Three in the Indictment be severed therefrom and that he be tried only on the two Counts in said Indictment in which it is alleged that he is a Defendant.

In Count Number One it is charged that he did, on or about March 13, 1946, in the jurisdiction of this Court, solicit and procure and cause one, James Rennaker, to give false testimony and in Count Number Two he is charged with unlawfully, corruptly and feloniously obstructing and impeding the due administration of justice in the District Court of the United States for the District of Montana, in that he corruptly caused one, James B. Rennaker, to give false testimony in a cause then pending in said Court; and

That in the Third Count in said Indictment, which he, the said Sam Catrino, moves the Court to sever from the Indictment against him, he is not charged with being a Defendant; on the contrary, the said Count Number Three charges the co-defendant in Count Numbers One and Two and one unknown person, who is described in Count Number Three as having unlawfully, corruptly and feloniously endeavored to influence one, Pat Pierre, to

give testimony [17] in an action entitled United States of America vs. Sam Catrino and John A. Reinhard, then pending in the United States' District Court of the District of Montana, on the grounds that it is prejudicial to the Defendant to compel him to stand trial on a Count in which he is not made a Defendant, nor wherein it is alleged that he conspired with the Defendants, named in said Count, to commit any crime, as alleged in said Count, and that testimony submitted in support of said Third Count, wherein he is not made a Defendant, will be prejudicial to him in his defense the two Counts in the Indictment in which he is made a Defendant, and that it will deprive him of being tried on an Indictment preferred against him, and in which he is charged with the commission of crime.

That at no place in Count Number 3 of the Indictment is it alleged that Sam Catrino was in any way connected with the offense therein alleged, or that he was in any manner connected with any of the transactions therein set forth.

That this Motion is made on the records and files in said cause and in particular to the Indictment therein.

J. D. TAYLOR,
GEORGE F. HIGGINS,
Attorneys for Defendant.

A true copy received and service accepted this
7th day of July, 1948, 10:25 a.m.

EMMETT C. ANGLAND,
Asst. U. S. District Attorney.

[Endorsed]: Filed July 7, 1948. [18]

Thereafter on July 7, 1948, Motion to Direct the Government to Elect between Count Number One and Two under which it will proceed was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

**MOTION TO DISMISS COUNT NUMBER ONE
OR TWO OR TO DIRECT THE GOVERN-
MENT TO ELECT BETWEEN COUNT
NUMBER ONE AND TWO.**

Come now Sam Catrino and John A. Reinhard, two of the Defendants charged in this Indictment, and move the Court for an Order directing that the Government make an election in this prosecution as to Counts numbered I and II of the Indictment, or that an Order be made dismissing either one of these Counts of the Indictment.

This Motion is made for the reason that the charge made in Count Number One and Count Number Two is identical; and that the Defendants will be prejudiced by having both Counts submitted to the jury against them.

There is a duplicity in the charges set forth in Counts Number One and Two and the charge in each one of these Counts charges identical offenses, to wit: subornation of perjury, each requiring iden-

tical proof, neither requiring proof of any fact not required by the other.

J. D. TAYLOR,
GEO. F. HIGGINS,
Attorneys for Defendants.

Service by true copy received this 7th day of July, 1948. 10:25 a.m.

EMMETT C. ANGLAND,
Asst. U. S. District Attorney.

[Endorsed]: Filed July 7, 1948. [20]

Thereafter on July 7, 1948, the Oral Order of the Court denying the Motion to Sever Count Three from the Indictment and the Motion to direct the Government to Elect between Count number One and Two under which it will proceed, was duly entered herein, the minute entry as to both motions being as follows, to wit:

In the District Court of the United States in and
for the District of Montana

[Title of Cause.]

This cause came on regularly for trial this day, the defendants Sam Catrino, John Reinhard and Lester LaValley being personally present with their attorneys Messrs. George F. Higgins and James D. Taylor, and Messrs. Harlow Pease and Emmett C. Angland, Assistants to the United States Attorney, being present and appearing for the United States.

Thereupon counsel for defendants filed and presented to the Court a motion to sever Count Three from the indictment as to defendant Sam Catrino, which motion was by the Court overruled and the exception of defendant noted.

Thereupon counsel for the defendants filed and presented to the Court a motion to dismiss Count number one or Count number two or to direct the government to elect between Counts numbered one and two in this prosecution, which motion was by the Court overruled and the exception of defendants noted.

Entered in open Court at Missoula, Montana,
July 7, 1948.

H. H. WALKER,
Clerk. [22]

Thereafter on July 9, 1948, the Verdict of the jury was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant Sam Catrino guilty in manner and form as charged in the Indictment on file herein as to Counts 2 and not guilty as to Counts 1; and find the defendant John A. Reinhard guilty in manner and form as charged in the Indictment herein

as to Counts and not guilty as to Counts 1 - 2 and 3.

LESLIE G. NELSON,
Foreman.

[Endorsed]: Filed July 9, 1948. [24]

Thereafter on July 10, 1948, the Judgment of the Court was duly filed and entered herein, being in the words and figures following, to wit:

In the District Court of the United States in and
for the District of Montana

No. 6784

Criminal Indictment in one count for violation of
U.S.C. Title 18, Sec. 232.

JUDGMENT AND COMMITMENT

On this 10th day of July, 1948, came the United States Attorney, and the defendant Sam Catrino appearing in proper person, and by his attorneys, Messrs. George F. Higgins and James D. Taylor, and,

The defendant having been convicted on the verdict of guilty of the offense charged in count two of the Indictment in the above-entitled cause, to wit: That on or about March 13, 1946, at Missoula, in the State and District of Montana, the defendant did unlawfully, corruptly and feloniously influence, obstruct and impede the due administration of justice in this Court, engaged in the trial of a cause entitled, United States of America vs. Sam Catrino and John A. Reinhard, in that he did cause one James B. Rennaker to attend said trial

and be sworn and testify as a witness in behalf of the defendants, to certain false statements, which said defendant and the said Rennaker knew to be false, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is by the Court Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General of the United States, or his authorized representative for imprisonment for the period of one year and six months, and that the said defendant do pay a fine of Three Hundred and Fifty Dollars, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

CHARLES N. PRAY,
United States District Judge.

Filed and Entered: July 10, 1948. H. H. Walker.
Clerk. [26]

Thereafter on July 12, 1948, Notice of Appeal was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Sam Catrino, Missoula, Montana.

Name and address of Appellant's Attorneys: J. D. Taylor, Hamilton, Montana, and George F. Higgins, Missoula, Montana.

Offense: In Count Two of the Indictment, the Defendant, Sam Catrino, was charged with obstruction of Justice as follows: "The above-named defendants, Sam Catrino and John A. Reinhard, on or about March 13, 1946, at Missoula, Montana, in the District of Montana and within the jurisdiction of this Court, did unlawfully, corruptly and feloniously influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the District Court of the United States for the District of Montana, then in session and engaged in the trial of a cause entitled, "United States of America vs. Sam Catrino and John A. Reinhard," wherein said Defendants were charged with and being tried for a violation of Section 241 of Title 25 of the United States Code, to wit: an unlawful sale of intoxicating liquor to Pat A. Pierre, an Indian Ward of the United States; particularly in this, that said Defendants did corruptly cause one James B. Rennaker to attend said trial and be sworn and testify as a wit-

ness for the said Defendants to certain false statements, which said Rennaker and said Catrino and Reinhard knew to be false, [28] to wit, testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1945, and there saw an un-named Mexican purchase a quantity of wine at the bar and deliver it to an Indian ward named Pat A. Pierre."

Concise statement of judgment and order, giving the date and sentence: On July 10, 1948, sentenced to one and one-half years' imprisonment, and ordered to pay a fine of Three Hundred Fifty Dollars (\$350.00).

I, the above-named Appellant, hereby appeal to the United States' Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: July 12, 1948.

/s/ SAM CATRINO,
Appellant.

GEORGE F. HIGGINS,
J. D. TAYLOR,
Attorneys for Appellant.

Service of the foregoing notice is hereby admitted this 12th day of July, 1948.

.....
Assistant U. S. Attorney.

[Endorsed]: Filed July 12, 1948.

Thereafter on July 12, 1948, Bond on Appeal was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

BOND OF DEFENDANT ON APPEAL

Know All Men by These Presents:

That we, Sam Catrino, as Principal, and G. D'Orazi and Mary Catrino, as sureties, jointly and severally acknowledge that we, and our personal representatives are bound to pay to the United States of America the sum of Six Thousand Dollars (\$6,000.00).

The condition of this obligation is such that, whereas, a judgment of conviction was made and entered against the Defendant, Sam Catrino, on the 10th day of July, 1948, wherein he was sentenced to one and one-half years' imprisonment and ordered to pay a fine of Three Hundred Fifty (\$350.00) Dollars, and, whereas Sam Catrino, said Defendant and principal obligor in this bond, has filed a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated Judgment,

Now, Therefore, if said Defendant, Sam Catrino, shall prosecute said Appeal to effect or if for any reason the Appeal is dismissed, or if the Judgment is affirmed, the Defendant, Sam Catrino, will surrender himself for the execution of said Judgment to the United States Marshal, in the District Court of the United States, District of Montana, Missoula Division, in accordance with all orders and direc-

tions of the Court, then this bond is to be void. But if the Defendant fails to perform this condition, payment [31] of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the District Court of the United States, for the District of Montana, Missoula Division, against each debtor jointly and severally for the amount above-stated and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this 12th day of July, 1948, at Missoula, Montana.

/s/ SAM CATRINO,
Deft. and Principal.
Missoula, Montana.

/s/ G. D'ORAZI,
Surety.
Missoula, Montana.

/s/ MARY CATRINO,
Surety,
Missoula, Montana.

Signed and acknowledged before me this 12th day of July, 1948.

Approved:

CHARLES N. PRAY,
United States Dist. Judge.

(Seal) /s/ H. H. WALKER,

Clerk of the United States District Court, District
of Montana.

We, G. D'Orazi and Mary Catrino, the sureties named in the above bond, being duly sworn, each for himself, says, that he is a freeholder and resident in said Missoula County and is worth the said sum of Six Thousand Dollars (\$6,000.00) over and above all his debts and liabilities, exclusive of property exempt from execution.

G. D'ORAZI,
MARY CATRINO.

Subscribed and sworn to before me this 12th day of July, 1948.

(Seal) H. H. WALKER,
Clerk of the United States District Court, District of Montana.

[Endorsed]: Filed July 12, 1948. [32]

Thereafter on August 9, 1948, Statement of Points was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

STATEMENT OF POINTS

Comes now the defendant and appellant, Sam Catrino, and makes the following statements of points upon which he intends to rely on the appeal.

1.

The refusal of the court to sustain the motion of the defendant to sever Count 3 from the indictment upon the ground that he was not a party defendant in Count 3, and that it was prejudicial to

him in his trial on Count 1 and Count 2 of the indictment.

2.

The refusal of the court to grant the motion of the defendant and appellant to strike Count 2 of the indictment, on the ground that, in legal effect, it is the same charge as is set forth in Count 1.

3.

The refusal of the court to grant the motion of the defendant and appellant to require the plaintiff to elect to try the defendant on Count 1 or Count 2.

4.

The court erred in the admission of testimony, in the trial of said cause, in support of Count 3 of the indictment.

5.

The court erred in instructing the jury that it could find the defendant, Sam Catrino, guilty on Count 3 of the indictment. [34]

6.

The motion of the defendant for an order for the entry of a judgment of acquittal at the conclusion of the Government's case, upon the ground that the evidence was insufficient to sustain a conviction of the defendant and should have been granted.

7.

The court erred in overruling the exceptions of the defendant and appellant to that part of the court's oral instruction to the jury wherein the court failed to instruct the jury that corroborating evidence was necessary to entitle the jury to return

a verdict of guilty against the defendant on Count 2 of the indictment.

J. D. TAYLOR,
GEORGE F. HIGGINS,
Attorneys for Defendant and Appellant.

Service of the foregoing Statement of Points admitted this 9th day of August, 1948.

EMMETT C. ANGLAND,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 9, 1948. [35]

Thereafter on August 9, 1948, Order for Transmission of Original Exhibit Number One to the Circuit Court of Appeals was duly filed herein, being in the words and figures following, to wit:

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF EXHIBITS

Upon application of the defendant, it is hereby ordered that the Clerk of this Court be, and he is hereby authorized to transmit to the United States Circuit Court of Appeals of the Ninth Circuit, original exhibit Number One introduced at the trial of the above entitled cause as part of the transcription of record.

Dated this 9th day of August, 1948.

CHARLES N. PRAY,
District Judge.

Entered and Noted in Civil Docket, August 11, 1948. H. H. Walker, Clerk.

[Endorsed]: Filed Aug. 9, 1948. [37]

Thereafter on August 9, 1948, Reporter's Transcript of Proceedings was duly filed herein, being Volume number Two of this Transcript, and being in the words and figures following, to wit:

In the District Court of the United States, District of Montana, Missoula Division

No. 6784

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAM CATRINO, JOHN A. REINHARD and
LESTER R. LaVALLEY,

Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Before: Honorable Charles N. Pray, sitting with a Jury at Missoula, Montana, July 7th, 8th and 9th, 1948.

Appearances: Mr. Harlow Pease, Asst. U. S. Attorney, and Mr. Emmett C. Angland, Asst. U. S. Attorney, Attorneys for Plaintiff. Mr. George F. Higgins, and Mr. James D. Taylor, Attorneys for Defendants. [39]

VOLUME 2

Be It Remembered, that the above entitled cause came on regularly for trial in the Federal Building, in the City of Missoula, Montana, on the 7th day of July, 1948, at 10:00 o'clock a.m., before the Honorable Charles N. Pray, sitting with a jury, the

plaintiff being represented by Messrs. Harlow Pease and Emmett C. Angland, Assistant United States Attorneys for the District of Montana, and the defendants being present in person and represented by Messrs. George F. Higgins and James D. Taylor, that the trial continued thereafter on the 8th and 9th days of July, 1948, and the following proceedings were had:

Court: Well, gentlemen, I see we have on the calendar this morning No. 6784, United States vs. Sam Catrino, John [43] Reinhard and Lester R. LaValley. Are you ready for the government in that case?

Mr. Pease: The government is ready.

Court: How about the defense?

Mr. Higgins: The defense is ready.

Mr. Pease: If your Honor please, I would like to call attention to the fact we have just been served with two motions on behalf of the defendants. I don't think we should be required to resist the motions after the trial has commenced.

Court: I think you are a little late.

Mr. Taylor: We are requesting permission to file motions to sever the third count insofar as the defendant Sam Catrino is concerned.

Court: I think the Court will sufficiently instruct the jury under instructions he will give. It seems to me we have gone over this matter heretofore on motion to dismiss, and that question has been talked about and discussed. I will overrule the motion. You may file it and I will overrule it.

You may take an exception. Have you another motion?

Mr. Higgins: Merely in connection with one presented Saturday morning orally. It calls upon the government to make an election as to count 1 or 2.

Court: I ruled on that already.

Mr. Higgins: May I be permitted to file the motion?

Court: Yes, and save your exception on it. [44]

Mr. Higgins: Not an exception.

(Thereupon, a jury was duly impaneled and sworn.)

Court: You may proceed with your statement.

Mr. Angland: Ladies and gentlemen of the jury now, rather than prospective jurors: At this time we are given an opportunity to summarize for you what we expect to prove in this case so that as the witnesses testify on the stand to the facts, they will unravel the story for you in chronological order as near as it is possible for us to present the case in that way. It isn't always possible to present it in perfect chronological order.

This case has a history beginning October 20, 1945. On that date we will show to you that one Pat Pierre, an Indian ward of the United States Government, went into the Brunswick Bar in Missoula, Montana, and purchased wine from John Reinhard, in the presence of the proprietor of the Brunswick Bar, Sam Catrino. Pat Pierre, being an Indian ward of the government and a juvenile at the time, of course, was not permitted to pur-

chase the liquor. The law prohibits the sale of that wine to him.

The local police officer, Mr. Greenfield, I believe it is, or Greenleif, Greenfield, I think it is, saw the sale, and when Pierre came out of the Brunswick Bar, Mr. Greenfield took the wine from him. On October 22nd, two days later, the Indian officers of the United States Government, that is, the Indian police, came to Missoula and arrested Mr. Catrino and Mr. Reinhard for having sold the wine to the Indian in violation of the law prohibiting the sale of liquor to an Indian ward of the government. They were taken on that date before the United States Commissioner and charged. Now, a formal charge against them was made in this Court on November 29, 1945, and at a later date that case was set for trial in this courtroom. On March 13, 1946, during the course of the trial, it became apparent that, we will show you through the transcript of what took place during the trial, there had been some perjured testimony presented on behalf of the defendants, Catrino and Reinhard.

One James Rennaker, who sits in the front row over there, was called as a witness by the defendants, and he testified on the stand before the jury trying Catrino and Reinhard for the violation of the Indian liquor law. Rennaker testified on the evening of October 20th, he was in the Brunswick Bar, and that Pat Pierre had approached him and asked him to buy the wine for him. Mr. Rennaker said—that is, he testified during that trial—that he refused Pierre, and then he observed Pierre go

over to a Mexican and asked this Mexican to buy him some wine, and he saw the Mexican buy the wine for Pierre at the bar from Reinhard in the presence of Catrino.

Now, Mr. Rennaker also stated—we asked him how he knew he had been in the Brunswick Bar on the evening of October 20, [46] 1945, and he stated he had checked his records, the records he maintained at that time as a trucker. He was in the trucking business, trucking and hauling cattle. He said he had kept records and checked the records and found he had driven that day to the Missoula Livestock Yards and up to Post Creek, Montana, and when he came back into Missoula, he stopped in the Brunswick Bar. That, in substance, is the story given to the jury that tried the other case.

The true facts, as Mr. Rennaker will testify to on the stand in this case are that shortly after, or between the time that Catrino and Mr. Reinhard were arrested for the Indian Liquor Law violation, Catrino and Reinhard came to Rennaker, and Catrino advised Rennaker he had helped him in the trucking business, and now it was Rennaker's turn to help him, and he said, "I have a mortgage, or I have the title to your trucks, and either you will help me or I'll put you out of business, and you will go into that courtroom"—this courtroom—"and tell the court and jury the story that I have just related to you, or else I'll take the trucks." He will tell you now the true fact is that his records show he was in Butte, Montana, that evening. He

couldn't have been in the Brunswick Bar. He hauled a load of cattle to Butte. He didn't know Pat Pierre, he had never seen Pat Pierre before the day he came into this courtroom, never seen him before that time, notwithstanding the fact he told that jury he had seen Pat Pierre many times before the occasion on which he had seen him in the Brunswick Bar. Mr. Rennaker at this time will come in and tell you what the true story is on that.

Further, we will show that this story wasn't given to Mr. Rennaker. He wasn't just told once, but he was carefully coached, carefully and thoroughly by Catrino, and on the morning of the trial that was held in this courtroom on March 13, 1946, Mr. Reinhard went down to Mr. Rennaker's house and wanted to take him to the Brunswick Bar before they came up to the courtroom, and Mr. Rennaker said, "No, I have a truck here, and I'll drive to the bar," as he was informed that is where the people were meeting before they came up to the Court, and he did drive down to the Brunswick Bar and Catrino again coached him and again prompted him on the fabricated, perjured story he was to present in this courtroom, and furnished him with several drinks of liquor for the purpose of bolstering his nerve. During the noon recess on that day—the case was tried March 13th—during the noon recess, the group returned to the Brunswick Bar and bolstered their courage again, and on that afternoon Remaker did come into the courtroom and give the false story I have related to you. Of course, if

that story had been believed by the jury sitting in your place on that trial, Catrino and Reinhard would have been acquitted, but we will show you that the jury did not believe that story and Catrino and Reinhard were convicted for a violation of the Indian Liquor law, as alleged in the charge at that time. They were found guilty in this courtroom on that charge. So, of course, that jury has determined that that testimony was false.

Now, further, we will show that shortly before the trial on March 13, 1946, Reinhard and LaValley drove up to Plains, Montana, and they rounded up an Indian there who could help them find Pat Pierre, the Indian ward that they were charged—Catrino and Reinhard were charged—with having sold wine to on October 20th. They found Pierre and Reinhard asked Pierre to come into this Court and fabricate a story and to say that he had approached the bar and asked for this wine in the Mexican language. Part of the defense in that case, as we will show you, was to the effect that there were a lot of Mexicans in the Brunswick Bar that night. However, we will have ample witnesses to prove that there were very few patrons in the bar. Patrick Pierre was offered \$100 by Mr. Reinhard if he would come into this courtroom and fabricate the story. Pierre did not accept the \$100 and would not fabricate the story. Notwithstanding, the charge here is, as to one count, based on that. It was an attempt to influence the witness, and the attempt,

of course, because it failed, is, nevertheless, an offense and violation of the law.

Now, there is another Indian, Fred Old Horn, who was present and heard this conversation when Pierre was offered the [49] \$100, and he will also testify before you to show what actually took place. After the approach had been made, the attempt to get Pierre to take the \$100, they drove Pierre and Old Horn back to Missoula and talked and pleaded with him, and LaValley assured him he would back him up if he would come in here and fabricate this story. They came back to Missoula. Pierre and Old Horn with them, but the fact is that the venture wasn't successful, and the charge is attempting to influence the witness only.

I haven't read the indictment to you, ladies and gentlemen. Mr. Pease has suggested to me that it would be a good idea to point out to you the facts relating to the different counts of this indictment so you will get the import of the evidence. The first count is the subornation of perjury charge. The charge in the indictment is, "The above named defendants, Sam Catrino, and John A. Reinhard, on or about March 13, 1946, at Missoula, in the District of Montana, and within the jurisdiction of this court, did unlawfully, corruptly and feloniously, procure one James B. Remaker, to commit perjury as follows: the said defendants, Sam Catrino, and John A. Reinhard, were charged in the District Court of the United States for the District of Montana, with a crime against the sovereignty

of the United States, to-wit, violation of Section 241 of Title 25, U.S.C.A., viz., an unlawful sale of liquor to an Indian ward of the government, alleged to have been committed on October 20, [50] 1945, at a saloon known as the Brunswick Bar in Missoula, Montana; said cause came on for trial on March 13, 1946; on and prior to said date, the said defendants, Sam Catrino and John A. Reinhard, solicited, procured and caused the said James Rennaker to appear as a witness in the said United States District Court on March 13, 1946, upon the trial of said cause and to be by the Clerk of said Court sworn as a witness in said cause and to testify that he, the said James B. Rennaker, on the late evening of October 20, 1945, was in the said Brunswick Bar and there saw a Mexican person buy a quantity of wine at the bar of said saloon, and deliver the same to one Pat A. Pierre; that said testimony so given was false and known by the defendants Sam Catrino and John A. Reinhard, and by the said James B. Rennaker, to be false: that in truth and in fact, said James B. Rennaker was not in said place, nor in the city of Missoula at the time referred to, to-wit, the late evening of October 20, 1945, but was in or near the city of Butte, Montana, and that in truth and in fact, he did not see any person sell any wine or other liquor to the Indian ward, Pat A. Pierre, on October 20, 1945."

Now, the second count of the indictment is a charge of obstruction of justice. You will note the

similarity of the evidence that will be presented in support of the first two counts as I read this: "The above-named defendants Sam Catrino and John A. Reinhard on or about March 13, 1946, at Missoula, [51] Montana, in the District of Montana and within the jurisdiction of this court, did unlawfully, corruptly and feloniously influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the District Court of the United States for the District of Montana, then in session and engaged in the trial of a cause entitled, "United States of America vs. Sam Catrino and John A. Reinhard," wherein said defendants were charged with and being tried for a violation of section 241 of Title 25 of the United States Code, to-wit: an unlawful sale of intoxicating liquor to Pat A. Pierre, an Indian ward of the United States; particularly in this, that said defendants did corruptly cause one James B. Rennaker to attend said trial and be sworn and testify as a witness for the said defendants to certain false statements, which said Rennaker and said Catrino and Reinhard knew to be false, to-wit, testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1945, and there saw an un-named Mexican purchase a quantity of wine at the bar and deliver it to an Indian ward named Pat A. Pierre."

You will note from that the similarity in the two charges.

Now, the third count is attempting to influence a witness. "The above-named defendants John A. Reinhard and John Doe"—Lester R. LaValley it would be now—"Lester R. LaValley, on or about October 20, 1945, in Sanders County, Montana, in the District of Montana and within the jurisdiction of this court, did unlawfully, corruptly and feloniously endeavor to influence one Pat A. Pierre, a witness in a cause entitled, 'United States of America vs. Sam Catrino and John A. Reinhard,' then pending in the United States District Court for the District of Montana, in which said Catrino and Reinhard were charged with unlawfully selling a quantity of wine to said Pat A. Pierre, an Indian ward of the United States, in that said defendants corruptly offered said Pat A. Pierre a sum of money as a bribe to procure him to testify that a bottle of wine, which was in fact sold to said Pierre by said defendant John A. Reinhard, was sold to said Pierre by a Mexican, and stated to said Pierre that they would back him up in said false testimony."

Court: Does the defense care to make a statement at this time?

Mr. Taylor: We waive at this time, if the Court please.

Court: Very well. Call your first witness.

G. C. VAUGHAN,

called as a witness on behalf of the plaintiff,
being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland:

Q. Your name is G. C. Vaughan, is that it? [53]

A. Yes, sir.

Q. Where do you reside, Mr. Vaughan?

A. Boise, Idaho.

Q. What is your occupation at Boise, Idaho?

A. I am a court reporter in the United States Court for the District of Idaho, and also law clerk and secretary for Judge Clark.

Q. That is for the United States District Judge for the District of Idaho?

A. That's right.

Q. In your capacity as a court reporter, were you called upon to report a case in this courtroom on March 13, 1946? A. Yes, sir.

Q. A case presided over by Judge Clark?

A. Yes, sir.

Q. And how long have you been a court reporter, Mr. Vaughan? A. Since 1920.

Q. You have been a professional court reporter since that time and reported cases in court and transcribed them?

A. That's right, in the United States District Court of Idaho since 1932.

Q. You have sat in the trial of cases and taken

(Testimony of G. C. Vaughan.)

notes in shorthand and then transcribed them on a typewriter? A. That's right, sir.

Q. On the trial of this case, did you take the proceedings in [54] shorthand? A. Yes, sir.

Q. Did you correctly take all that was said by the witnesses who were called to testify in that case? A. By the witnesses, yes, sir.

Q. And after you had taken that testimony in shorthand, did you later transcribe it on a typewriter? A. Yes, sir.

Q. And you correctly transcribed it, Mr. Vaughan? A. Yes.

Court: What was the date of that trial?

Mr. Angland: March 13, 1946, your Honor.

Q. I will hand you, Mr. Vaughan, what has been marked as Plaintiff's Proposed Exhibit number 1, and ask you whether or not you know what that is?

A. Yes, I do.

Q. What is it?

A. It is a transcript in the case of United States of America, Plaintiff, against Sam Catrino and John A. Reinhard, a transcript of the evidence given in the trial had on March 13, 1946, in Missoula.

Q. In this courtroom?

A. That's right, sir.

Q. And that is a correct transcription taken from your shorthand notes? [55]

A. That's right.

(Testimony of G. C. Vaughan.)

Q. You have the shorthand notes with you if they are asked for? A. I have.

Mr. Angland: May it please the Court, the instructions are also transcribed in the back of this, and I don't believe we ought to offer them.

Court: What you propose to do is offer what you may deem material in this case?

Mr. Angland: We will offer at this time, your Honor, all of the evidence contained in the transcript.

Court: Have counsel for the defendant had an opportunity to examine a copy of that transcript so they are familiar with it?

Mr. Angland: We loaned that to Mr. Higgins sometime ago, your Honor.

Court: I see.

Mr. Pease: That is the same transcript, Mr. Higgins.

Court: Any objection, gentlemen?

Mr. Taylor: No, your Honor.

Court: Very well, you have offered it. It may be received in evidence.

Mr. Angland: Just the evidence in the case. I imagine I will have to read the transcript at this time. It is an exhibit. [56]

Court: Either you can read it, or you can have the gentleman who took it read. He is the witness now on the stand.

(Whereupon, Plaintiff's Exhibit 1, being a transcript of the evidence taken at Missoula,

(Testimony of G. C. Vaughan.)

Montana, on March 13, 1946, in the District Court of the United States, in and for the District of Montana, in Cause No. 6718, United States of America, Plaintiff, vs. Sam Catrino and John A. Reinhard, Defendants, was received in evidence and was read to the jury. The same will be certified to the Circuit Court of Appeals by the Clerk of the above entitled Court.)

Court: Have you anything further documentary?

Mr. Angland: No, your Honor.

Mr. Taylor: There is no cross examination of this witness.

Mr. Angland: I would ask then, your Honor, that this witness be permanently excused. He is required in the course of his duties to get back.

Mr. Taylor: It is agreeable to us.

Court: Very well, Mr. Vaughan will be excused.

(Whereupon, at 5:00 o'clock p.m., July 7, 1948, an adjournment was taken until 10:00 o'clock a.m. July 8, 1948, at which time the following proceedings were had, the jury being present, and the defendants being present in person and represented by their counsel.)

H. H. WALKER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [57]

Direct Examination.

By Mr. Angland:

Q. You are Mr. H. H. Walker?

A. Yes, sir.

Q. You reside in Helena, Montana?

A. Yes.

Q. Your official capacity is Clerk of the District Court of the United States, District of Montana?

A. Yes, sir.

Q. And as such clerk, you have in your custody the official records of the Court?

A. I have, yes.

Q. Do you have with you the record showing the trial in Criminal Cause No. 6718, Missoula Division, entitled, "United States vs. Sam Catrino and John Reinhard?" A. Yes, sir.

Q. Does your record show, Mr. Walker, when the two defendants were first arrested and arraigned before the United States Commissioner?

A. October 22, 1943, it says here, or 1945.

Q. What was the charge made before the United States Commissioner, Mr. Walker?

A. That the defendants did furnish and sell liquor to an Indian Ward of the United States Government, to-wit: wine.

Q. Was there subsequent to that filing an information filed [58] in this court? A. Yes, sir.

(Testimony of H. H. Walker.)

Q. What was the charge made at that time?

A. That on the 20th day of October, 1945, the defendants sold, gave away, disposed of, exchanged and bartered to an Indian person named Pat A. Pierre certain vinous and intoxicating liquor, to-wit, wine.

Q. That is charged against Sam Catrino and John Reinhard jointly? A. Yes.

Q. Were you present, Mr. Walker, at the time that case was tried? A. I was.

Q. Does your record show the date of the trial?

A. On March 13, 1946.

Q. Do you know the two defendants who were tried at that time? A. I do.

Q. Are they present in court?

A. They are, the two men on the right, the man in the center and on the right.

Q. Do you know which is which?

A. Sam Catrino is in the center and Reinhard on this side.

Q. Was that case, according to your record, submitted to a jury, Mr. Walker? [59]

A. It was, yes.

Q. During the course of the trial, does your record show that one James B. Rennaker was sworn and testified as a witness?

A. I haven't that part of the record here. That isn't in the judgment roll. The minutes are all kept in Helena, and I wasn't instructed to bring them along, so I didn't look them up.

(Testimony of H. H. Walker.)

Mr. Angland: We have the transcript also in evidence, your Honor. That shows he was sworn and testified.

Q. The witnesses in the case were sworn by the Clerk? A. Yes, oh, yes.

Q. Either yourself or a deputy duly authorized to swear witnesses? A. Yes.

Q. What was the verdict of the jury in that case according to your record, Mr. Walker?

A. Two verdicts, one against each, but they are identical. We, the jury in the above entitled cause, find the defendant in the above entitled cause guilty in the manner and form as charged herein.

Q. As to each defendant?

A. As to each defendant.

Q. Was there ever any appeal filed in that case, Mr. Walker?

A. No, the defendants came right in and paid their fines.

Mr. Angland: You may cross examine.

Mr. Taylor: No cross examination.

(Witness excused.)

MRS. ESTHER RENNAKER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland:

Q. Will you state your name, please?

A. Esther Rennaker.

(Testimony of Mrs. Esther Rennaker.)

Q. Where do you live, Mrs. Rennaker?

A. On the south side, 616 Ivy.

Q. In Missoula? A. Yes.

Q. Are you the wife of James B. Rennaker, the gentleman sitting back of the rail? A. I am.

Q. Were you the wife of Mr. Rennaker, James B. Rennaker on March 13, 1946?

A. I was, yes.

Q. In what business was Mr. Rennaker engaged between October 20, 1945 and March 13, 1946?

A. He was stock hauling, trucking.

Q. Trucking stock? A. Yes. [61]

Q. In and about Missoula, Montana.

A. That's right.

Q. And to other points in the State of Montana?

A. That's right.

Q. Did you assist Mr. Rennaker in that business in any way?

A. I took the telephone calls at home, and sometimes I would go with him.

Q. On trips you mean, hauling? A. Yes.

Q. Did you keep a record? A. I did.

Q. The record was kept by you in your handwriting? A. That's right.

Q. Was that record accurately kept?

A. Absolutely.

Q. Mr. Rennaker continued in the stock hauling and trucking business after March 13, 1946?

A. Yes, he did.

Q. I will hand you, Mrs. Rennaker, what has

(Testimony of Mrs. Esther Rennaker.)

been marked as Plaintiff's Exhibit 2, and ask you if you know what that is? A. I do.

Q. Do you know what that book is I have handed to you? A. This is my record book.

Q. Do you have in that book entries dated October 20, 1945? A. I do. [62]

Q. Will you open the book to the entries on that date, please? A. There it is.

Q. Now, Mrs. Remaker, are there any entries in that book on October 20, 1945, showing whether or not Mr. Rennaker hauled any cattle to Post Creek, Montana, from the Missoula Livestock Yards in Missoula, Montana? A. No.

Q. There are not? A. No.

Q. And you stated that the record is accurately kept? A. That's right.

Q. And kept in your handwriting?

A. That's right.

Q. Can you tell by referring to that record where Mr. Rennaker was on the evening of October 20, 1945? A. He was in Butte.

Q. And how can you tell that from your record, if you will just advise the court and jury as to that, will you?

A. Well, most generally it was right around noon or shortly after noon when he would leave here, and it takes quite a while to go to Butte, and I happened to be with him.

Q. You state you happened to be with him. Do

(Testimony of Mrs. Esther Rennaker.)
you recall having made the trip to Butte, Montana,
with Mr. Rennaker on October 20, 1945?

A. I do. [63]

Q. You recall having made that trip. Do you
recall at about what time on that day you arrived
in Butte, Montana?

A. It was right around midnight, because we
had a little trouble finding the place and asked at
a filling station where it was.

Q. That is the place you were looking for?

A. The place we were looking for.

Q. To whom were you delivering cattle on that
date? A. Parke Davis.

Q. Do you recall at about what time that day
you left Missoula, Montana?

A. It was in the afternoon sometime.

Q. Do you recall at about what time you left
Butte to return to Missoula?

A. Well, we left right after we unloaded the
cattle, and it was close to midnight when we got in
there.

Q. So it would be sometime in the early
morning of October 21st when you left Butte to
return to Missoula, Montana?

A. Yes, sir.

Q. Let me look at the record, please. The record
at the bottom—let me mark this, if I may. I won-
der if you would mark that Exhibit 2A. The Clerk
has marked a page in this book Plaintiff's Exhibit
2A. Is the record you referred to, the last entries

(Testimony of Mrs. Esther Rennaker.)

on that page, the bottom of the page with the number 20 beginning the entry, is that October 20, 1945? [64]

A. Yes.

Q. The top of the page is "Hauls for October," and that indicates the 20th day? A. Yes.

Q. Do you want to look at this before I ask you any further questions on it? Mrs. Rennaker, were the entries shown on the respective dates on that page, Plaintiff's Exhibit 2A, made on the date shown in the entry? A. Yes, they were.

Q. That is, the entry dated the 20th of October was made on the 20th of October, or possibly on the 21st of October, on or about that date?

A. That's right.

Q. And that would be the same as to any other haul for any respective date shown there?

A. Yes.

Q. I will ask you one other item. There are four entries, Mrs. Rennaker, for the date October 20, 1945. The third entry is "One load, P. Davis, Butte," is that the one about which you have testified?

A. That's right. The others were made with the other truck. We had two trucks at the time.

Q. The entry following that entry was not made by Mr. Rennaker? A. No. [65]

Q. That was made by somebody in his employ?

A. My brother. He drove the other truck.

Q. That does not indicate that haul was made after the Parke Davis haul, is that correct?

(Testimony of Mrs. Esther Rennaker.)

A. No. They were just all made the same day, and I just wrote them down as I came to them.

Mr. Angland: At this time we offer Plaintiff's Exhibit 2A in evidence.

Court: Any objection, gentlemen?

Mr. Taylor: No objection. That is restricted to that page?

Mr. Angland: Just to this page.

Court: It may be received in evidence.

(Plaintiff's Exhibit 2A, here received in evidence, is as follows:)

PLAINTIFF'S EXHIBIT 2-A

Hauls for October

1	1 load for Teasdale	7	21.00	.63
1	load C. McClain.....	.	6.00	.18
2	7 loads Dalys	69	17.50	.53
1	load Reardon (Lolo).....	3	6.00	.18
3	3 loads M. Flynn.....	34	25.00	.75
4	1 load B. Kalapuick.....	5	3.00	.09
1	load J. Kuhl.....	8	15.00	.45
5	1 load B. Mercer.....	6	5.00	.15
1	load H. Sol	4	3.00	.09
1	load M. Flynn.....	7	2.50	.08
1	load C. Reardon	11	4.00	.12
2	loads E. Albers	22	5.00	.15
1	load C. Prepstol	12	9.00	.27
1	load P. Davis.....	21	30.00	.90
2	load B. Mercer	24	10.00	.30
1	load B. Klapuick	10	3.00	.09
1	load J. Mathieus.....	1	3.00	.09
6	1 load hogs Dalys.....	13	2.50	.08
1	load Opitz	8	2.50	.08
9	1 load Barnes	3	7.00	.21
1	load Richardson	4	6.00	.18
10	1 load McClay	10	3.00	.09
12	1 load B. Mercer	9	5.00	.15
1	load H. Sol	5	3.00	.09
1	load M. Flynn	5	2.50	.08
1	load B. Mercer	7	5.00	.15

(Testimony of Mrs. Esther Rennaker.)

13	1 load Opitz	12	2.50	.08
	3 loads Dalys	56	7.50	.23
	1 load Edwards horses	5	12.00	.36
			never paid	
14	1 load Flynn (horses).....	..	14.00	.42
	1 load Olson (horses).....	8	25.00	.75
15	1 load hogs Dalys.....	32	15.00	.45
	2 loads Dalys (Hamilton).....	43	30.00	.90
	Inspection	4.30	...
16	1 load A. Deschamps.....	2	3.00	.09
	1 load Opitz (Msla Orchards).....	6	4.00	.12
17	6 loads Dalys (Milwaukee)	56	15.00	.45
	1 load A. Deschamps.....	9	3.00	.09
18	1 load D. Maloney	4	3.00	.09
19	1 load Sturm	3	3.50	.11
	2 loads Klapuick	12	6.00	.18
20	1 load Dalys	4	2.50	.08
	1 load Opitz	12	2.50	.08
	1 load P. Davis (Butte).....	25	30.00	.90
	1 load Nagy	4	3.00	.09

Q. Now, Mrs. Rennaker, can you tell from looking at Plaintiff's Exhibit 2, from your book, when Mr. Rennaker went out of the trucking business?

A. Well, almost.

Q. Well, let me ask this question of you. Can you tell whether or not he was still in the trucking business on March 13, 1946? A. Yes.

Q. He was in the business? A. Yes. [67]

Q. Do you know whether or not, since you kept the records for Mr. Remaker, the trucks that he was using to haul cattle were paid for and his on March 13, 1946? A. No.

Q. They were not? A. No.

Q. Do you know who held the title to those trucks? A. Sam.

Q. By Sam do you mean Sam Catrino?

A. That's right.

Q. He held that on March 13, 1946?

(Testimony of Mrs. Esther Rennaker.)

A. That's right.

Q. Now, Mrs. Rennaker, do you recall the event of the trial of Sam Catrino and John Reinhard in this courtroom on March 13, 1946?

A. I remember it, but I wasn't here.

Q. You weren't in the courtroom, but you do recall the date? A. No, I don't.

Q. Do you recall your husband, in the presence of either John Reinhard or Sam Catrino, stating anything about coming up to the courtroom to testify in that case?

A. The morning of the trial John Reinhard came to the house and asked him if he had a way of coming, and he said he would take the truck.

Q. Did he say where he would come to? [68]

A. They were all to meet at the Brunswick.

Q. This is a conversation that you are testifying about matters that took place between your husband, James Rennaker, and John Reinhard?

A. That's right.

Q. And about what time of the day, if you recall?

A. It was in the morning, I don't know just what time.

Q. Was it at about eight o'clock, or nine o'clock in the morning, or seven o'clock?

A. I would say it would be about nine or after. It was between nine and ten, I think.

Q. Was anything further said between John Reinhard and your husband that morning?

(Testimony of Mrs. Esther Rennaker.)

A. Well, John just said—(interrupted)

Mr. Higgins: Just a minute, to which we object unless it is shown to have been made in the presence of Sam Catrino, one of the defendants.

Court: Well, of course, if it wasn't in the presence of Sam Catrino, it couldn't be held as against him, whatever statement might have been made then. What are the facts? Do you want to inquire as to that as to whom was present?

Mr. Higgins: The only persons—I believe she has testified the only persons present were her husband and John Reinhard.

Court: Very well, I will permit her to testify. Go ahead. [69]

Q. Let me ask you this, Mrs. Rennaker. Can you name the persons present in your house at the time this conversation took place?

A. My husband was there, and John Reinhard, and myself, and my youngsters.

Q. Your youngsters, how old are they?

A. Twelve, ten, eight and five.

Q. That is about the age they were at that time, or is that their age now? A. Their age now.

Q. What was the conversation between John Reinhard and your husband at that time?

A. Well, John came in and asked him if he had a way of coming, and he said, "Yes," he had the truck. John said, well, he had to go see another witness, see if Rhoda Wells, I believe he called

(Testimony of Mrs. Esther Rennaker.)

her, he wanted to go down and see if she had a way of coming.

Q. Was there anything else said, Mrs. Rennaker? A. I don't think so.

Court: Do you people on the jury hear her? Very well.

Mr. Angland: You may cross examine.

Cross Examination

By Mr. Taylor:

Q. As I understand you, Mrs. Rennaker, on the morning of the trial, that would be March 13, 1946, Mr. Reinhard came to [70] the house and asked your husband if he had any way of going to court, is that it? A. That's right.

Q. And at that time, that was the extent of the conversation, is that correct?

A. Yes, well, yes.

Q. I notice in your Exhibit A, Mrs. Rennaker, that on a particular October 20th there are several entries of trips made which you say now were made by your brother? A. That's right.

Q. What page was that on? Do you remember the page number, Mr. Angland? Now, by that you mean on page—on the page marked Plaintiff's Exhibit 2A, you have an entry "20." That would be October 20th, I assume. "One load Dalys"—

A. Dalys.

Q. And "One load Opitz?"

A. One load Opitz.

Q. And "One load Davis," and following that,

(Testimony of Mrs. Esther Rennaker.)

"One load Nagy?" A. That's right.

Q. Do you want the court and jury to understand that those entries were made on the 20th or 21st of October?

A. They were made the 20th, but with the other truck, the small loads were made by the small truck.

Q. I think you misunderstand me, Mrs. Rennaker. I am asking [71] if you want the Court and jury to understand that the entries you made in this book concerning those trips were made on the 20th or 21st of October?

A. I generally made them just as soon as I got back.

Q. I will ask you specifically if it isn't a fact that all entries made in Plaintiff's Exhibit 2A were made at the one and the same time?

A. That's right.

Q. You have entries there that disclose trips made on October 1, right on down to the 20th?

A. That's right.

Q. I am asking you if all those entries were placed in the book at the same time?

A. No, they weren't made at the same time. They were made date by date.

Q. You want the Court and jury to understand that every entry made on this page, Exhibit 2A, was made at the time and on the date disclosed on the entry? A. Yes.

(Testimony of Mrs. Esther Rennaker.)

Q. Now, when did you learn that your brother had made these trips?

A. They were made before we left for Parke Davis.

Q. There is one entry made after the entry made for the Davis load. That Nagy is made after?

A. I didn't take them just the way he made the loads. [72]

Q. Do you know where the load for Daly's was taken? A. To the slaughter house.

Q. In Missoula? A. That's right.

Q. And the load of Opitz?

A. To the slaughter house.

Q. And the load to Davis? A. To Butte.

Q. And the load to Nagy?

A. It was just a short trip.

Q. How does it happen that in this book you have recorded or registered the place that the Davis load was hauled to?

A. If you will notice, I have all the long loads marked that way because I just did that all the way through. The long loads were marked by the towns.

Q. Did you take any of these entries from other slips and put them in the book subsequent to the time deliveries were made? A. What?

Q. Were any of these entries taken from slips? For instance, your brother, you say, delivered the Daly load and the Opitz load. Did he have a slip from that from which you would put this in the book?

(Testimony of Mrs. Esther Rennaker.)

A. No, I did that from calls to the house and just as soon as they were made, I would enter them in the books. [73]

Q. You would enter the charge made for the respective loads? A. Yes.

Q. You say that your husband was still in the trucking business on the 13th day of March, 1946?

A. Yes.

Q. And you want the Court to understand that the title to the trucks that he was operating was held by Mr. Catrino? A. One was, yes.

Q. In what form was the title held? Do you mean he held the title or had a chattel mortgage?

A. He had the title in his own name.

Q. In his own name? A. That's right.

Q. That was one of the trucks?

A. That's right.

Q. You say he had two trucks?

A. That's right.

Q. How was the other truck? In whose name was the title to it?

A. I don't know which truck it was. He had several of them there.

Q. On the 13th day of March, did Mr. Catrino have title to the two trucks your husband was operating? A. No, he had title to one.

Q. Did he have any security, any liens on the other truck? [74] A. I don't know.

Q. Now, was your husband divested of title to these trucks by Mr. Catrino? A. What?

(Testimony of Mrs. Esther Rennaker.)

Q. Did Catrino take the trucks or foreclose the liens he had after the 13th of March?

A. He just took the trucks. It was after the 13th. I have it marked down there when he took the trucks.

Q. Could you tell—do you recall whether Mr. Catrino took the trucks from your husband before March 13, 1946, or after? A. After.

Q. After March. Do you recall when your husband went to Great Falls recently? A. Yes.

Q. Was it after he went to Great Falls or shortly before?

A. Quite awhile before he went to Great Falls.

Q. How long before, Mrs. Rennaker?

A. I just don't know.

Q. Was it a month or a week?

Mr. Pease: If your Honor please, the witness has indicated she made a notation in the record book as to when the truck was repossessed by Catrino and I think she should be permitted to refer to that to refresh her recollection.

Court: You can do that on re-direct.

Mr. Taylor: It wasn't on this page. [75]

Mr. Pease: She says it was there. Give her a chance.

Court: Proceed.

Q. You haven't any independent recollection, Mrs. Rennaker, whether it was shortly before your husband went to Great Falls that Mr. Catrino took the trucks?

A. He took them quite awhile before he went.

(Testimony of Mrs. Esther Rennaker.)

Q. What would you mean by quite awhile, a month, six weeks? A. It was longer than that.

Q. How long would you say?

A. I don't remember. I wrote it in the book.

Q. Would it help you any to look at the book to refresh your recollection?

A. Yes, it would. He took the semi right after the 24th of February, 1947.

Q. When after the 24th of February, 1947?

A. Yes, and he took the other one in the first part of May of 1947.

Q. When was that last, the first part of May?

A. Yes, of 1947.

Q. Now, with reference to the first part of May, 1947, when did your husband go to Great Falls? Is that disclosed in your book? In any event, up to the first day of May, 1947, Mr. Catrino had not exercised his right to do what he pleased with the mortgage or whatever security he had on the truck. He permitted Mr. Rennaker to keep one of the trucks to the 24th [76] of February, 1947, and the other until the first part of May, 1947, is that correct? A. Yes.

Q. And it was after, in any event, after the first part of May, 1947, that your husband went to Great Falls, is that correct?

A. I don't remember when he went to Great Falls.

Q. It would be after those dates or before?

A. It was after.

Q. Yes. Now, did you know that your husband

(Testimony of Mrs. Esther Rennaker.)

—did you know how it happened that Mr. Reinhard came down to the house on the 13th day of March to bring your husband up to the court, or the Brunswick, or wherever they were to meet? A. No.

Q. Do you know whether they had previously arranged, or that your husband had requested Mr. Reinhard to come and get him, that he had no way **of getting up there?** A. No, I don't.

Q. You don't know anything about that?

A. No.

Re-direct Examination

By Mr. Angland:

Q. You have been asked some questions about when your husband went to Great Falls. What idea did you have as to what trip to Great Falls was being talked about? [77]

A. I didn't know, I don't know what they were talking about.

Q. You don't know what trip to Great Falls that Mr. Taylor was talking about when he asked those questions? A. No.

Q. You have testified as to when Catrino took the trucks from your husband. You said the semi was taken right after February 24, 1947. Will you tell the Court and jury how you can determine that from your record?

A. Well, every haul that was made was either made by the small truck or the semi, and if it was made by the semi, I have semi. The last record I have in here was made the 24th of February.

(Testimony of Mrs. Esther Rennaker.)

Q. 1947? A. Yes.

Q. Does that record also show the purchase of gas and oil and repairs to the truck, or what does it record?

A. I have my last record made the 27th of March, or February it is.

Q. Rather than the 24th of February?

A. Yes.

Q. You find the entry now for the 27th of February, 1947, is that right? A. That's right.

Q. You are certain that is the last date on which the semi-truck made a trip? [78]

A. That's right.

Q. So that thereafter Mr. Rennaker did not use that truck for any hauling? A. No.

Q. By the semi, you mean a large truck with a detachable trailer, is that right?

A. That's right.

Q. That is what you have referred to?

A. Yes.

Q. It had a large rack for hauling cattle?

A. A great big long rack, yes.

Q. A big long rack. The other truck you state was taken by Mr. Catrino the first part of May, 1947. Will you tell the court and jury how you determine that from your record?

A. Well, my last expenses were the 8th of May.

Q. That is the last expense for that truck?

A. For the Chevy, yes.

Q. That was a Chevrolet truck? A. Yes.

Q. What type truck was that?

(Testimony of Mrs. Esther Rennaker.)

A. A small rack. It had a rack built right on the truck. It wasn't detachable.

Q. It wasn't a semi-trailer built right on?

A. No.

Q. Rather a long wheelbase? [79]

A. No, it was just a ton and a half truck.

Q. A ton and a half Chevrolet truck?

A. That's right.

Q. Your last entry there is May 8, 1947, is that right? A. That's right.

Q. You also stated that it was usual for you to enter in the book notations when they were long loads, I believe you called them, or long hauls made?

A. That's right.

Q. As you did on the 20th of October, 1945?

A. That's right.

Q. Let me look at the page again, will you? Now, I see you have some of the entries on this page that have similar notations. You have one near the top of the page, "one load Reardon, Lolo". Is that the type of entry you mean?

A. That's right.

Q. You have one marked here, "horses". That is a little different type load. It was usually cattle?

A. Yes, usually cattle.

Q. You have one here marked "Hamilton" on this page? A. That's right.

Q. You have one, "Missoula Orchards", and you have another marked, "Milwaukee"?

A. That was from the Milwaukee railroad.

Q. That is, the notation, "Butte" after "one

(Testimony of Mrs. Esther Rennaker.)

load P. Davis" [80] is typical after that type entry, is that right? A. Yes.

Mr. Angland: I overlooked reading this to the jury, and I would like to do this at this time.

Court: Very well.

(Plaintiff's Exhibit 2A read to the jury.)

Q. Mrs. Rennaker, can you tell us what the various entries indicate, in these four columns where you have figures?

A. The first ones are the number of head, the number of cattle, and the second is the amount of the trip, and the third is the tax on it.

Q. What is the fourth—I see?

A. That is really the amount of the trip (indicating).

Q. There is really three columns rather than four, dollars and cents in the second?

A. This is dollars and cents in the second.

Mr. Angland: That is all.

Re-cross Examination

By Mr. Taylor:

Q. What is the last month you made an entry for any hauling by these trucks, Mrs. Rennaker?

A. By both, or either one of them?

Q. The first truck, the semi-trailer, I think the last entry was on the 27th of February?

A. Yes. [81]

Q. And then, from then on, did your husband still freight with the other truck?

(Testimony of Mrs. Esther Rennaker.)

A. The small one, yes.

Q. That went, as I understand you now—the last entry was on the 8th of May, 1947?

A. Yes.

Q. And from then on there was no trucking, is that it? A. No.

Q. No trucking done by your husband?

A. No, he was out.

Q. He was out. Did your husband make more than one trip to Great Falls this last summer and fall? A. What do you mean?

Q. Did your husband go to Great Falls?

A. You mean with trips?

Q. Go to Great Falls for anything, whether it was a trip or otherwise? A. Yes, he went.

Q. That is what I was asking you. How long before the trucks were taken, the last truck was taken by Mr. Catrino, that your husband made this trip to Great Falls? A. I don't know.

Q. You don't know. That is all.

Mr. Angland: That is all.

(Witness excused.) [82]

JAMES B. RENNAKER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. Will you state your name, please?

A. Jim Rennaker, James Rennaker.

(Testimony of James B. Rennaker.)

Q. James B. Rennaker, is that your full name?

A. That's my full name.

Q. Mr. Rennaker, where do you reside, in Missoula, Montana? A. Missoula.

Q. You are the husband of Mrs. Rennaker who just testified? A. Yes, sir.

Q. Are you the same James Rennaker that testified in this courtroom on March 13, 1946, in a case in which the United States charged Sam Catrino and John Reinhard with a violation of the Indian Liquor Laws? A. Yes, sir.

Q. And were you subpoenaed into this court to testify in that case?

A. No, I was asked to come up here.

Q. You weren't served with any subpoena?

A. No.

Q. Were you placed under oath by the Clerk when you took the witness stand in that case? [83]

Mr. Higgins: Just a moment. To which we object, your Honor, the record is the best evidence of that.

Court: I will permit him to testify whether he was sworn. I will overrule the objection.

A. Yes.

Q. And you did take the witness stand and testify in that case? A. Yes.

Q. Do you recall the testimony that you gave in that case, Mr. Rennaker? A. Yes.

Q. At that time—did you hear that testimony read here in the courtroom yesterday afternoon?

A. I did.

(Testimony of James B. Rennaker.)

Q. You heard this read, Mr. Rennaker: "Are you acquainted with the Brunswick Bar? Yes, I am", and the next question, "Were you there October 20th of last year?" Answer, "Yes, I was." Was that true or was that false testimony?

A. False.

Q. Were you in fact in the Brunswick Bar on October 20, 1945? A. No.

Q. The next question was, "Do you recall any Indian, the boy who was on the stand testifying, coming in there that evening?" You answered, "Yes, sir". Did you see the Indian boy who had testified in that trial in the Brunswick Bar on that date? [84] A. No, sir.

Q. That was a false statement?

A. Yes, sir.

Q. The next question is, "Were you there about eleven o'clock," you answered, "Yes, sir." Was that true or false? A. False.

Q. The next question is, "Do you recall him coming up and having a conversation with you?" You answered, "Yes, sir." The next question is, "That evening?" You answered, "I do." Is that true or false? A. That is false.

Q. The next question is "Tell the jury what it was?" The answer is, "He asked me to buy him a quart of wine, and I says I cannot buy you any wine." Was that true? Did you have that conversation or not? A. No.

Q. You didn't? The boy did not ask you to buy

(Testimony of James B. Rennaker.)

him any wine that evening? A. No.

Q. The next question is, "Where were you standing at the time this conversation took place?" The answer was, "The east end of the bar." Question, "Would that be a point near by the stove or phonograph?" The answer was, "It was." The question was, "From where you were standing, could you see the front door or the entrance door on the northwest corner of the bar?" [85] The answer was, "No." Was any of that testimony true?

A. No.

Q. Then, there is a question on page 54—just a minute, I believe I skipped one. Here on page 54 of the transcript there is a question, "Tell the Court and jury what the Indian did after you had this conversation?" Your answer to that was, "He came in and asked me to buy him a quart of wine and I said, 'No, I can't buy you any wine', and he came over to the bar and as the house was full of Mexicans, he asked this Mexican there to buy him this quart of wine and the Mexican got the quart of wine and then he turned around and handed it to the Indian and the Indian went out." Did you actually overhear that conversation, or was that false testimony also? A. That was false.

Q. Now, on cross examination, Mr. Rennaker, I asked you—(interrupted)

Mr. Taylor: What page is that?

Mr. Angland: This will be on page 55.

Q. I asked you here, "You have been receiving evening calls?" Answer, "I do, my wife does."

(Testimony of James B. Rennaker.)

Question, "Where do you receive these calls?" Answer, "At home." "Do you keep a record of these calls?" Answer is, "Yes, sir." Then you were asked, "Have you checked these calls to see what hauling you might have been doing on October 20th?" You answered, "Yes." The question is, "What hauling did you do on that day?" Answer is, [86] "I went to Post Creek that night." Question, "What time did you leave?" Answer, "I left about six o'clock." Was that testimony true or false? A. False.

Q. You had not in fact checked your records to see what hauling you had done on that day?

A. No.

Q. You were asked, "For what purpose?", referring—strike that. The question was, "What time did you leave?" Your answer was, "I left about six o'clock." "For what purpose?" The answer was "A load of cattle." Question, "How many?" The answer was, "Nine or ten." "Where did you haul them?" The answer was, "To Roamer." "You went for the cattle or delivered them?" Answer, "Delivered them up there." Was that testimony about your going to Post Creek and delivering cattle to Mr. Roamer true or false?

A. False.

Q. At page 57, Mr. Rennaker, of the transcript—I am afraid I will have to refer back to page 56 to get this correct, you were asked here, "Have you ever had other Indians ask you to purchase for them?" Your answer was, "No, not that."

(Testimony of James B. Rennaker.)

Question is, "That is the only one?" Answer, "At other times I have had them ask me to buy for them." Question, "How many times?" Answer, "Five or six times." Question was, "You do recall this particular request?" Answer, "Yes, sir." Question was, "Who [87] was the Indian that made that request of you on October 20th of last year?" You answered, "He is sitting over there.", and you indicated at that time Pierre, is that right, the Indian boy who was in the courtroom?

A. That's right.

Q. Had he actually made a request of you on the evening of October 20, 1945? A. No, sir.

Q. Had you, in fact, ever seen Pat Pierre before that day in the courtroom?

A. No, I hadn't.

Q. You hadn't seen him before that?

A. No.

Q. Mr. Rennaker, when did you first hear of the case, if you recall, that had been filed against Sam Catrino and John Reinhard for violation of the Indian Liquor Law? Do you remember when you first heard about it?

A. Right after they got picked up.

Q. By that you mean right after they were arrested? A. Yes.

Q. Who told you about the case, if you remember? A. Sam did.

Q. Sam Catrino? A. Yes.

Q. Was any suggestion made or request made

(Testimony of James B. Rennaker.)
of you at the time [88] when Sam talked to you about the case?

A. He said I would be a good witness, make a good witness for him.

Q. For him? A. Yes.

Q. Did you reply to his statement?

A. I had to.

Q. What was that? A. I had to.

Q. Why did you have to?

A. He was financing me on trucks and I had to listen to him.

Q. Did Mr. Catrino tell you you had to listen to him?

A. He told me—he didn't say I had to, but he said, "You have got to testify for me."

Q. He said, "You have got to testify for me?"

A. Yes.

Q. Did he tell you how you were to testify?

A. He did.

Q. What is the story he told you you must testify to?

A. Well, he told me to get on the stand and say that an Indian asked me to buy him a quart of wine and I refused him, and the Indian went over and asked a Mexican to buy him a quart of wine and the Mexican bought him a quart of wine and handed it to the Indian and he went out.

Q. Now, did Mr. Catrino tell you that just once?

A. He told me several times.

Q. Was anyone else present when he told you how you were to testify? A. No.

(Testimony of James B. Rennaker.)

Q. Was John Reinhard present at any of the conversations you had with Mr. Catrino about the way you were to testify? A. Not then.

Q. By then, what do you mean, right after they were arrested?

A. It was after they were arrested when Sam asked me.

Q. Let us come down to a point near the trial, which as the record shows was held here on March 13, 1946. Now, shortly before the trial, did you have a conversation with either Sam Catrino or John Reinhard as to how you were to testify?

A. Well, Sam—Sam told me the first time what to testify to and then John, he come along and he says, "Will you be a witness for us, Jim?", and I says, "Of course, I will."

Q. John Reinhard you mean said that?

A. Yes. He asked me if I would be a witness. He didn't know if I knowed something about it, but Sam says, "He will be a witness for us."

Q. When was that, now? How long before the trial did that conversation take place, do you remember?

A. It was right after they was arrested.

Q. Shortly after they were arrested. What else was said at that time? [90]

A. Well, I told him I didn't know. I told Sam I didn't know whether I could remember that or not, and he says, "I'll jog your memory so you will know."

Q. Was your memory jogged?

(Testimony of James B. Rennaker.)

A. Several times.

Q. How many times?

A. I couldn't say how many, but six or eight, anyway.

Q. Between the latter part of October, 1945, and March 13, 1946? A. That's right.

Q. And did Mr. Reinhard assist Mr. Catrino at any time in jogging your memory?

A. Not that I know of.

Q. Was he present at conversations that you had with Mr. Catrino about how you were to testify?

A. He was there when the last time Sam told me how to testify.

Q. When was that?

A. Just the day before the trial.

Q. Day before the trial?

A. Or the morning before the trial, I mean.

Q. You mean the morning of the day before the trial?

A. No, the morning the trial was on.

Q. Where did that conversation take place?

A. Brunswick Bar.

Q. Was anyone else present and heard the conversation other [91] than you, John Reinhard and Sam Catrino? A. No.

Q. Just the three of you that heard that conversation? A. That's right.

Q. What was said that morning at the Brunswick Bar—or first—strike that, will you. Had you seen Mr. Reinhard or Mr. Catrino before you went to the Brunswick Bar that morning?

(Testimony of James B. Rennaker.)

A. Well, Reinhard came down and asked me if I had a way to get up to the witness stand, and I told him I had my truck, and I says, "I will go up in the truck."

Q. Did you discuss anything else in your house that morning with Mr. Reinhard? A. No, sir.

Q. You stated there was a conversation held between the three of you on the morning of the trial in the Brunswick Bar. Do you recall what was said at that conversation?

A. Well, I told Sam I didn't like to do that, and he said, "I'll give you a few shots of whisky", and he says, "You will be all right."

Q. Did he give you a few shots of whisky?

A. He did.

Q. Do you recall how many?

A. Four or five.

Q. Did you go over or review the story you were to tell when you got on the witness stand at that time? [92] A. Yes.

Q. You reviewed that story with Mr. Catrino and Mr. Reinhard, did you, that morning?

A. That's right.

Q. Did you go into specific dates and where you were to be in the Brunswick Bar that evening?

A. That's right.

Q. You stated a little while ago you had not seen Pat Pierre before you came into the courtroom that day. What were you told about that?

A. They told me, Sam says, "Do you know Pat

(Testimony of James B. Rennaker.)

Pierre?", and I says, "No.", and he says, "You can tell them you did anyway".

Q. Mr. Rennaker, how much of an education have you had? A. I went to the second grade.

Q. Now, you have testified to a number of things you said were false. When you stated them on that witness stand on March 13, 1946, did you at that time know that they were false and believe them to be false. I mean, when you testified here on March 13, 1946, did you know then that those things were false? A. I did.

Q. Since an indictment was returned in this case, Mr. Rennaker, have you been contacted by either Mr. Catrino or Mr. Reinhard?

A. I don't know what you mean. [93]

Q. Well, there is an indictment now being tried that was returned against the three men sitting here, and the record would show that was returned March 13, 1948. Have you been contacted by either Mr. Catrino or Mr. Reinhard concerning the testimony you would give in this case since that time?

Mr. Higgins: Just a moment, to which we object, your Honor, on the grounds that this is something separate and apart from what is set forth in the indictment, and apparently they are going to attempt to show a subsequent offense, something subsequent to that which is charged in the indictment or in any of the counts of the indictment, and it isn't material to any of the issues here, as to whether Sam and John are guilty under count 1

(Testimony of James B. Rennaker.)

and count 2, or whether Reinhard and LaValley are guilty under count 3.

Mr. Angland: If the Court please, this would go to show motive and intent.

Court: On the question of intent, I think I will overrule the objection. You don't need to make any argument on it.

Q. Do you recall my question? A. No.

Q. Have you been contacted by either Sam Catrino or John Reinhard since this indictment was returned by the Grand Jury sitting in Great Falls last spring? A. With Sam, yes.

Q. By Sam? [94] A. Yes.

Q. Sam Catrino you mean? Have you had any conversation with Sam Catrino as to how you would testify in this trial? A. I did.

Q. What was your conversation—strike that. Do you recall when you had a conversation or conversations with Sam Catrino regarding that matter?

A. I had a lot of conversations with him since I come back from Great Falls.

Q. That is, when you say, "come back from Great Falls", you refer to your appearance before the Grand Jury sitting in Great Falls last March?

A. That's right.

Q. You have had a number of conversations with him since that? A. After that.

Q. Did these refer to how you were to testify in this case? A. That is what he told me.

Q. What was that?

(Testimony of James B. Rennaker.)

A. He was trying to get me to testify that he didn't make—force me to lie on the witness stand. He wanted me to get up here and tell the jury he didn't force me to lie on the witness stand.

Q. Was anybody else present during any of these conversations?

A. Nobody but me and Sam. [95]

Q. Where did you have the conversation, if you recall?

A. Well, we was in his bar and we was out on the road.

Q. What do you mean by out on the road?

A. Riding around.

Q. In whose car? A. Sam's car.

Q. Catrino's car. Was any offer or inducement made to you if you would come in and testify in that manner?

A. He told me he would put me back in business after the trial was over if I would testify like that.

Q. Can you tell the Court and jury just what he wanted you to testify to in this trial, just what Mr. Catrino wanted you to testify to in this trial?

A. He wanted—I told you what he wanted me to testify.

Q. Tell me again, possibly I didn't get it all.

A. He wanted me to testify on the witness stand here that he didn't force me to lie on the witness stand.

Q. Anything else?

A. I don't remember now, no. He said for me to go up there and tell on the witness stand that

(Testimony of James B. Rennaker.)

he did not force me to lie and if I would do that, after the trial was over with, he would put me back in business.

Q. Was there anything else that he said that you can now recall?

A. He said if I did that, my sentence wouldn't—I wouldn't [96] be in no trouble or anything. They wouldn't give me very much of a sentence out of it, I might just get a suspended sentence out of the deal.

Q. Was the purpose of that to free Mr. Catrino and you take the sentence, is that the idea?

A. That's right.

Q. Was that program outlined to you by Mr. Catrino more than one time? A. That's right.

Q. Do you know how many times, Mr. Rennaker? A. I didn't keep track of them.

Q. Quite a number? A. Quite a number.

Q. Now, Mr. Rennaker, you were charged by indictment, you were charged with committing perjury in this court on March 13, 1946, weren't you?

A. That's right.

Q. You have already entered a plea of guilty to that offense, haven't you? A. I did.

Q. And you have been, as a result of that plea, held in the custody of the United States Marshal for the past few weeks? A. That's right.

Q. Awaiting sentence in that case?

A. That's right. [97]

Mr. Angland: You may cross examine.

(Testimony of James B. Rennaker.)

Cross Examination

By Mr. Taylor:

Q. How long have you known Mr. Catrino, Mr. Rennaker? A. About eight years.

Q. About eight years. During that period of time, have you been intimately associated with him?

A. Ever since the first time I met him.

Q. That would be eight years? A. Yes.

Q. What was the relationship, or the business, if any, that you were engaged in during that period of time?

A. I knew Sam for going in and out of there ever since I moved to Missoula.

Q. You formerly lived just below Hamilton?

A. That's right.

Q. Before coming to Missoula, you lived near Hamilton? A. That's right.

Q. For the past eight years you have lived in this community here, and you have been associated more or less with Mr. Catrino?

A. That's right.

Q. He was formerly in the restaurant business here? I say, before going into the Brunswick business, he was engaged in the restaurant business here, Mr. Catrino? [98] A. No.

Q. What business was he engaged in?

A. He was a bar tender, tending bar here.

Q. Now, when did you first become associated with him in a financial way? In other words, when did he advance you money to buy trucks, if he did?

(Testimony of James B. Rennaker.)

A. Well, I was driving for Ray Darnell, driving his trucks in the business.

Q. Whose trucks?

A. Ray Darnell's. I was working for him. Then he sold out to McClung up here, and McClung, he thought I wasn't good enough to drive the truck, he got someone higher up than I was to drive his truck for him, so I went on for about four months. I went to work at the sugar factory, and I was working there and I put in, I think it was four months at the sugar factory. He came back and asked me to go driving truck for him again.

Q. That was Sam? A. No.

Q. I am asking when did you first have business relations with Sam Catrino, wherein he loaned you money to buy trucks, or took security on your trucks? A. Three years ago.

Q. That would be in 1945?

A. Somewhere in there.

Q. Was it before the 13th day of October, 1945, Mr. Rennaker? [99] A. I don't remember.

Q. Do you have any recollection as to the month that he first advanced you a sum of money to buy trucks?

A. I don't know that. I ain't got the education to remember dates.

Q. A day or two after he was arrested, you say, you stated you were owing him money and that you had to testify for him. What would you say as to that? Your testimony was that you had to, that

(Testimony of James B. Rennaker.)

he was financing you. What did you mean by that statement?

A. He financed me on two trucks.

Q. Then, the question I previously asked you was when did he advance you that money? Was it before the 13th of October, and if so, how long before? A. I don't remember that myself.

Q. But it was before the 13th of October, 1945?

Court: He says he don't remember.

A. I don't remember.

Q. He didn't remember how long before, as I understood him. I think you stated on your direct examination that he told you, Sam Catrino told you you would make a good witness for him, is that what he said? A. Who do you mean by that?

Q. That Mr. Catrino, the defendant here, told you after his arrest that you would make a good witness for him. Is that [100] what he said?

A. The first time, yes.

Q. That was shortly after the arrest?

A. That's right.

Q. Where was that conversation had, Mr. Rennaker? A. In his barroom.

Q. Now, were you in the barroom frequently or otherwise? A. Practically in there every day.

Q. Practically every day. Over what period of time?

A. Just when I would come in off a trip somewhere.

Q. Did you make that your headquarters?

A. The biggest part of the time.

(Testimony of James B. Rennaker.)

Q. And after the arrest, he said you would make a good witness for him, is that correct?

A. That's right.

Q. That statement was made to you in the Brunswick, is that correct? A. Yes.

Q. Then later on you say, or did you tell Sam, Mr. Catrino, that an Indian boy wanted you to buy some liquor and you didn't do it and he asked a Mexican. Did you tell Sam that?

A. No, I didn't.

Q. What did you tell him, Mr. Rennaker?

A. I told him I didn't know anything about it.

Q. What did he say then? [101]

A. He says I can tell you what to say.

Q. Did he tell you in the English language so you could understand him? A. He did.

Q. When was that conversation had in which he told you?

A. Right when he told me about the trial.

Q. The same time? A. Yes.

Q. That would be shortly after his arrest?

A. That's right.

Q. On the morning of the trial, that would be March 13, 1946, you had another conversation with him at the Brunswick, did you?

A. That's right.

Q. And at that time Mr. Reinhard was there, is that correct? A. That's right.

Q. You say you went over the same thing, that an Indian boy wanted you to buy some liquor and

(Testimony of James B. Rennaker.)

you told him no and a Mexican boy bought the liquor? A. That's right.

Q. You saw the Mexican boy give it to the Indian? A. That is what I told then, yes.

Q. Were you in there on the night of the 21st of October, 1945?

A. I don't remember what day that is. [102]

Q. You don't remember any of those dates?

A. No.

Q. The testimony you gave in court was on March 13, 1946?

A. I don't remember when that was.

Q. You don't remember anything about that?

A. No.

Q. Well, anyway, after this trial—you remember when Sam and Mr. Reinhard were tried in this court for that sale? A. Yes.

Q. You recall that, Mr. Rennaker. Was that in 1946?

A. I don't remember what the date was about. One thing I never did learn was the dates of things anyway.

Q. Well, anyway, after that trial, you and Mr. Catrino still had your business relationship, that is, you were owing him some money on the trucks?

A. Yes, I did owe him some money on the trucks.

Q. On both trucks, Mr. Rennaker?

A. Just on the one.

Q. And what kind of truck was it?

A. G.M.C.

Q. That was a mortgage, was it?

(Testimony of James B. Rennaker.)

A. That is the one he had the title of.

Q. Did he have a mortgage on the other truck? He had the title to one, and did he have a mortgage on the other? A. He had a lien on it. [103]

Q. How was that represented, in a bill of sale or chattel mortgage, or what?

A. I don't know that myself.

Q. Then sometime later he took those trucks from you, did he not? A. He did.

Q. Do you have any recollection now as to the approximate date he took the trucks from you?

A. No, I don't.

Q. Could you fix the date by taking the date of the trial in which you testified, March 13th, as a starting point? Could you tell about when it was with reference to that date?

A. No, I couldn't.

Q. I will ask you, Mr. Rennaker, if it was in the summer or fall of 1948?

A. It was in the spring of the year when he took the Chevy away from me.

Q. When did he take the other truck?

A. About a month, I would say, before.

Q. Would that be in the spring right after the trial, the spring following March 13, 1946, or was it the spring of 1947 or 1948?

A. I don't remember the dates.

Q. After he took the trucks—on up to the time he took those trucks from you, the relationship between you and Mr. Catrino [104] was friendly, was it not? A. It was.

(Testimony of James B. Rennaker.)

Q. When he took the trucks away from you, did your relationship toward him change?

A. It did.

Q. Did you make any statement to him as to what you intended to do as to retaliation for his taking the trucks? A. I did not.

Q. Well, following the taking of the last truck from you, did you appear before the Grand Jury in Great Falls? A. No, sir.

Q. Didn't you? Didn't you—you were asked that by counsel for the government as to whether or not you appeared before a Grand Jury?

A. I never appeared over there until, it was in the last month or so.

Q. You did appear last month, that would be the month of June, 1948?

A. I don't know dates. I ain't educated enough to know dates.

Q. Prior to your appearance—now, you recall you did appear before the Grand Jury at Great Falls? A. Yes, sir.

Q. Before you went to the Grand Jury, did you have any conversation or make any statements to Sam as to what you would do unless he loaned you some money? [105] A. No.

Q. Did you discuss money with him at all before you went to Great Falls? A. No.

Q. Now, you testified here that you had, in the case that was tried on March 13, 1946, that you had fixed that date by virtue of the fact that you went to Post Falls. You told in the cross examination

(Testimony of James B. Rennaker.)

of that trial, according to this record, you fixed the date by reason of the fact you went to Post Falls?

A. Post Falls, what do you mean by that?

Q. Post Creek? A. Yes.

Q. Where is Post Creek with reference to Missoula? A. About 40 miles out of town.

Q. Forty miles. That is up on highway—(interrupted)

A. Up the other side of Mission.

Q. Did Sam know you had gone to Post Creek that day? A. No.

Q. Had you said anything to him about that?

A. No.

Q. Had he said anything to you about your saying you had been to Post Creek?

A. He told me I could tell where I made one of these short trips. [106]

Q. He told you that? A. Yes.

Q. Did you discuss with him that trip you made to Post Creek?

A. He asked me, "Can't you figure out some of these short trips you made so you could explain that up there in court?"

Q. At that time he told you, as you told the Court and jury here to say you were in his place of business that night and that an Indian boy wanted you to buy wine and you told him you wouldn't do it and you saw the Mexican, and he also told you to say that, if they questioned you about it, to say you had taken a short trip that day, is that correct? A. That's right.

(Testimony of James B. Rennaker.)

Q. Did he anticipate there would be some question about where you had been that day?

A. That is what we planned out, me and him.

Q. That is what he planned out for you to say?

A. Yes.

Q. The words, the testimony you gave with reference to Post Creek was your own idea, was that it?

A. He asked me if I knew of any short trips I could make, and that is what I told him.

Q. That was all discussed at the time that you say he told you you would make him a good witness?

A. Yes.

Q. Did he tell you then he was financing you and that you [107] would be obliged to be a witness, did he tell you that? A. He did.

Q. He told you that in the same conversation?

A. He told me that several times before this trial ever come off that if I didn't listen to him, he would take the trucks away from me.

Q. Was that before or after the trial on March 13, 1946, that he made these statements to you?

A. I don't remember dates.

Q. But you will remember, Mr. Rennaker, whether it was before or after the trial, wouldn't you? A. Before the trial, yes.

Q. The alleged offense was committed October 20, 1945, so it would be between that particular date and March 13, 1946?

A. It was before the trial. It is when he told me what to say.

(Testimony of James B. Rennaker.)

Q. On the very morning of the trial, you told the Court and jury, that you went to the Brunswick and you rehearsed this matter, talked it over so you could remember the story. Is that correct?

A. That's right.

Q. Had you previously, as you now state, discussed that matter in which he told you that you had to testify for him?

A. He didn't then, no.

Q. Didn't you want to testify for your friend, Mr. Catrino? [108]

A. I didn't exactly want to do it, but I knew I had to or lose my outfit.

Q. Didn't you suggest to him you were in there that evening and this same Indian boy had tried to get you to buy liquor for him? A. I didn't.

Q. You didn't tell him that? A. No.

Q. Did you tell him where you had been on the 20th of October? A. No, I didn't.

Q. You didn't tell him you had been to Butte?

A. I didn't.

Q. You didn't say anything about that. Can you recall now approximately what date it was that you had the first conversation, when Sam told you, as you have stated, that you would make a good witness for him, how long after the 20th?

A. It was the next day after he got picked up.

Q. As I understand, the 20th was on Saturday, is that correct? And that he was, as you call it, picked up on Monday? A. Yes.

(Testimony of James B. Rennaker.)

Q. Was that right, Mr. Rennaker?

A. I don't remember whether it was Monday, Tuesday or Wednesday.

Q. But where were you when you had this conversation? [109] A. Brunswick Bar.

Q. You had gone to his bar? He was operating that bar? A. That's right.

Q. Did you discuss with him the arrest, or his being picked up, did you talk that over with him?

A. He told me he had got arrested.

Q. Had you known it at that time?

A. No.

Q. Did he tell you the charge placed against him or the reason he was arrested?

A. Yes, he told me.

Q. What did he say?

A. He said, "Johnny got arrested for selling a quart of wine."

Q. Did he say who sold it, whether he sold it or someone else sold it? Did he say anything about that?

A. No, there wasn't much said about that.

Q. Was it then in that conversation that he told you you would be a good witness for him?

A. That's right.

Q. And he made that expression, did he?

A. He did.

Q. He said you would be a good witness for him, is that correct?

A. That's right. The reason he said I would

(Testimony of James B. Rennaker.)

make a good witness was because I was in there every day. [110]

Q. You were there every day over a period of how long?

A. Ever since he bought them trucks for me.

Q. What?

A. Ever since the time he bought the trucks for me.

Q. That truck was bought how long before this conversation in October?

A. I don't remember that.

Q. You don't remember anything about that?

A. No.

Q. Do you remember how much you were owing Sam on the trucks?

A. I have got it all down in a receipt book.

Q. Was there any disagreement between you and Sam at that time as to the payment, that is, as I understand, he says you were to pay as you went along out of your hauling. You were to pay so much to Sam out of each trip you made in which you received compensation hauling cattle, or whatever you hauled, is that correct?

A. No, sir, the agreement we was to make was I had Daly's slaughter house hauling out there. He says, "You take what you make on the outside and I will take Daly's money for the payments on the trucks."

Q. Was there any misunderstanding or disagreement between you and Mr. Catrino about your applying the money you received for the Daly haul-

(Testimony of James B. Rennaker.)

ing to him on the payment for the truck? Did you quarrel with Mr. Catrino about that? [111]

A. No, sir.

Q. Did he claim you weren't paying him for what you received?

A. No, the only time we ever had any argument about it is when he refused to sign receipts for money given him, Daly's money.

Q. Was that before or after the 13th of March, 1946?

A. I don't remember that. That is when he took the trucks.

Q. That would be after the 13th of March, 1946, you had the quarrel with him at the time he took the trucks, is that correct?

A. No, I didn't have no quarrel with him at all.

Q. What was the disagreement?

A. I most generally took my receipts down and gave them to Sam. He went to Daly's and collected the money for his part, that is, his money to pay on the trucks. Then I would bring the receipt book up and he would sign a receipt showing just what he had got.

Q. At this particular time was some words exchanged between you and Sam about your not turning in on the Daly hauling the amount you had agreed to be applied on the indebtedness on which he had security of the trucks?

A. The only thing he done, he refused to sign receipts, and I went to Daly's myself and collected the money.

(Testimony of James B. Rennaker.)

Q. Did you quarrel about that? Did you and Sam quarrel about it? [112] A. No.

Q. But you do remember that you did have that misunderstanding to the extent you stated, and you went out to Daly's and collected the money for the hauling, is that correct?

A. The last two hauls I made.

Q. Did you turn the money over to Mr. Catrino?

A. No, I kept it.

Q. As a result of your keeping the money, did you have any quarrels later after that? Did he quarrel with you, or the two of you quarrel about your collecting this money and not turning it over to him?

A. I went to Sam and asked for it, and he told me, he says, "Anytime you get the chance and you need that money I have coming from Daly's," he says, "you go ahead and take it", and that is what I did, and the—(interrupted)

Q. At the time he took away these trucks—
(interrupted)

Mr. Pease: Let him finish his answer. Your Honor, the witness was interrupted in his answer.

Mr. Taylor: I apologize, your Honor.

Court: The government will probably take a note on it and on redirect bring it out, so go ahead.

Q. You stated at the time he took away the last truck, you had a quarrel with him, or some misunderstanding about your paying him what you earned hauling for Daly's, is that correct? At the time he took the last truck? [113]

(Testimony of James B. Rennaker.)

A. Could I explain that?

Q. Yes, as far as I am concerned.

A. How come him to take the last truck?

Q. No, the question was: As I understood you to say, Mr. Rennaker, at the time he took the last truck from you, you and he had some misunderstanding about payments?

A. No, no misunderstanding was there at all.

Q. With reference to the disagreement you had about paying him what you received from Daly's, when was it he took the last truck?

A. That was after I lost my business and stuff.

Q. What do you mean, "lost your business?"

A. When he took the first truck, I lost Daly's hauling.

Q. Then later he took the second truck?

A. Later he come along and got a job up here hauling railings from Ovando, and I hauled around up around Helena and Great Falls and all around Butte and Dillon, and all over, and he also told the guy to collect the money. He had given me money enough only for expenses, and after that, after I financed my truck down here to Krable for \$300.00 to buy a new set of tires to put on, he says between the Main Motors they had this made up between them, they was going to get the truck, but I didn't know it.

Q. Then, following that, did you go and tell Sam you were going over and claim that he had procured you or asked you to [114] give false testimony? A. No, sir.

(Testimony of James B. Rennaker.)

Q. Did you say anything about what you were going to do to him? A. No, sir.

Q. Never said a thing about that?

A. No, sir.

Q. Now, I understand in your direct examination, that after this present indictment against Mr. Catrino and Mr. Reinhard was filed, that Sam came to you and tried to influence you as to the testimony you would give? A. He did.

Q. Well, now, from the time—where were you living from the time this indictment was filed up to the present time?

A. I was living on 616 Ivy Street.

Q. Did you live at any time in Great Falls from the time the indictment was returned until a day or two ago? A. Eighteen days.

Q. You were in Great Falls between what dates with reference to the trial of this case?

A. I don't remember that.

Q. You went to Great Falls, and you came back here after you went to Great Falls? A. No.

Q. You stayed at Great Falls. And when did you return to [115] Missoula?

A. Last Thursday.

Q. Last Tuesday? A. Thursday.

Q. Upon your return, where have you lived?

A. In jail.

Q. When you were in Great Falls, where were you living? A. In jail.

Q. When, then, did he contact you and ask you to testify in this case and to get you to say he

(Testimony of James B. Rennaker.)

didn't force you to testify in that other case that was tried March 13, 1946?

A. That was before we had the hearing in Missoula to go in and plead.

Q. I beg your pardon.

A. That was before we had our hearing here in Missoula to give our plea.

Q. You were in Great Falls, were you not, from the—(interrupted)

A. And before I made my plea, plead guilty.

Q. You went over to Great Falls and appeared before the Grand Jury? A. I did.

Q. And you remained in Great Falls from the time you went over there until last Thursday, then you returned here and you were in jail ever since, is that correct? [116]

A. That's right.

Q. Now, do you want us to understand that it was before you made your plea of guilty?

A. That is what I mean. We had this—(interrupted)

Q. The indictment was returned against you, was it, at Great Falls?

A. I don't know what you mean by indictment.

Q. Was some papers filed by the government charging you had given, in that case on March 13th, false testimony at the request of Mr. Catrino and Mr. Reinhard? A. I don't think so.

Q. How did it happen you remained there from the time you went over for the Grand Jury until last Thursday?

(Testimony of James B. Rennaker.)

A. I went over there and plead guilty and couldn't get out.

Q. Now, before you went over there, before this matter was even brought up, did you tell Sam Catrino what you were going to do and demand that he give you a thousand dollars?

A. No, I didn't.

Q. Did you demand that he give you anything and state to him if he didn't, you were going over and tell the story or say that the testimony you gave in his hearing was false?

A. He offered me money, yes.

Q. I am asking you if you didn't tell him that he had taken your trucks away and that unless he gave you something, some money, you were going over and say that he procured you or induced [117] you to give false testimony in his trial that was had on the 13th of March, 1946?

A. I told Sam—Sam asked me something about that, yes.

Q. Sam asked you. What did he say, Mr. Rennaker, about that?

A. He says, "If I had knowed this case was coming up, I wouldn't have took the trucks from you."

Q. He said if he had known this case was coming up, he wouldn't have taken what?

A. Taken the trucks from me.

Q. From the time this case came up, you had

(Testimony of James B. Rennaker.)

spent your entire time either in Great Falls or in Missoula after last Thursday, is that correct?

A. That's right.

Q. When did he make that statement to you? In Great Falls or while you were in jail here in Missoula?

A. This is before I even went over and plead guilty.

Q. Had Sam and Mr. Reinhard been indicted before that? A. What do you mean by that?

Q. Had the papers been filed by the government? A. They was put under bonds.

Q. Charging that they had procured you to testify falsely. Was that filed before you had appeared before the Grand Jury or after?

A. After.

Q. From the time you appeared before the Grand Jury at Great [118] Falls, up to last Thursday, you were either in Great Falls incarcerated or incarcerated in the County Jail in Missoula, is that correct? I say you have been in jail all the time?

A. That's right.

Re-direct Examination.

By Mr. England:

Q. Do you recall being subpoenaed as a witness and your wife being subpoenaed as a witness over to Great Falls last March?

A. It was last March sometime. I remember us getting a subpoena to go over there. That is when I gave my plea.

(Testimony of James B. Rennaker.)

Q. A paper something like this (indicating) was served on you and your wife?

A. That's right.

Q. You appeared before a Grand Jury and told the story that you have been relating here in substance, is that right? A. That's right.

Q. Then you returned to Missoula, is that right?

A. That's right.

Q. And here about six or seven weeks ago, I believe, you were called into this court and you entered a plea of not guilty, is that right?

A. That's right.

Q. And after that, about 20 days ago, you went to Great Falls and you entered a plea of guilty, is that right? A. That's right. [119]

Q. Your attorney took you along and went over there? A. That's right.

Q. You changed the plea you had entered here before. Between the time you appeared before the Grand Jury and the time you were called into this Court to enter your plea, you were free to go about your business, weren't you? A. That's right.

Q. Did you know at the time you referred to Sam Catrino being on bond, did you know that he had been arrested after your appearance in Great Falls last March? A. I did.

Q. You also knew a charge had been filed against you, didn't you? A. I did.

Q. You knew you would be called on in Court and either plead guilty or not guilty to that charge,

(Testimony of James B. Rennaker.)

is that right? A. That's right.

Q. So, you were in and about Missoula after the time the charge was filed against you, in Missoula until about 20 days ago? A. That's right.

Q. That is the time you referred to having Sam contact you and talk to you about how you should testify during this trial, is that right?

A. That's right. [120]

Q. You said in response to a question by Mr. Taylor that you had not demanded a thousand dollars from Sam Catrino, but your answer was that he offered you some money? A. He did.

Q. Do you remember how much he offered you?

A. Sam offered me two thousand dollars if I would take the rap.

Q. And by take the rap, what do you mean, if you will explain that to the Court and jury? Maybe some of the jurors don't understand.

A. If I would get up on the witness stand and swear he didn't force me to lie.

Q. If you would get on the witness stand and testify falsely in this case, he would give you \$2,000? A. That's right.

Q. And you were to take the rap, in other words, you were to take the brunt of the charge?

A. That's right.

Q. What did you tell Sam when he made that offer to you?

A. I told him I didn't think that was money enough to serve time in Deer Lodge or somewhere.

(Testimony of James B. Rennaker.)

Q. You didn't think you wanted to go to the penitentiary for that price?

Mr. Higgins: We object to Mr. England injecting an answer. He said it wasn't enough money, and the District Attorney is [121] going to put in a new answer for him. He has been leading the witness all the way through.

Q. Did you tell Sam you wanted more money to do that? A. No, I didn't.

Q. Did you tell him you would do as he requested for any given sum of money at all?

A. No, I didn't.

Re-cross Examination.

By Mr. Taylor:

Q. When you returned from Great Falls, you say, from the time you returned from Great Falls to the time you were arrested, you were in Missoula. Now, between what dates were you in Missoula? A. I come in here last Thursday.

Q. But I am trying to have you tell the Court and jury when it was you had these conversations with Mr. Catrino and wherein Mr. Catrino was in Missoula. Now, when did you have these so-called conversations, one in which you said Sam offered you \$2,000 to take the rap, is that the expression he made? A. That's right.

Q. He told you he would give you \$2,000 if you would take the rap? A. That's right.

Q. Did you tell him that wasn't enough?

A. There wasn't very much said about that.

(Testimony of James B. Rennaker.)

Q. Well, now, when did you have the conversation with him in which he told you to take the witness stand and say—to get up on the witness stand and say that the testimony you gave was true or Sam didn't get you to testify? What did he tell you about that, Mr. Remaker? What did he tell you, you would get \$2,000 if you would take the rap? Was there any rap in view at that time?

A. For me.

Q. Yes. When did you have the next conversation with him in which you stated he told you if you would get on the witness stand and testify that he didn't get you to give false testimony?

A. He told me that several times.

Q. Was that after your return from Great Falls? A. Yes.

Q. You returned when?

A. I don't remember that.

Q. Do you know whether Sam was gone any part of the time of June or May or April? Was he here all the time?

A. He was gone when I went to Great Falls. He went to California or somewhere.

Q. When you returned from Great Falls, was he here? Had he returned from California?

A. It was the next day. It is after I got back from Great Falls. [123]

Q. You can fix that date. Where did you first see him after your return from Great Falls? Where did you meet up with him? A. In his bar.

(Testimony of James B. Rennaker.)

Q. You went to his bar? A. Yes.

Q. That would be the Brunswick. And he had recently returned from California, he had just returned, is that correct? A. That's right.

Q. Was he away at the time you were in Great Falls? In other words, was Sam in California or on his way to California at the time you went to Great Falls, do you know?

A. I don't remember.

Q. Do you remember whether he had gone to California before you went to Great Falls?

A. I heard someone say he went to California, and that is all I know.

Q. Yes. After you returned from Great Falls, you went into the Brunswick, did you? I say, after you returned from Great Falls, you went into the Brunswick, that is, his place of business.

A. That's right.

Q. Did you enter a conversation with him in which he made the remarks that he would give you \$2,000 if you would take the rap?

A. That wasn't then. [124]

Q. What was said then?

A. It was before we was supposed to come up here and plead guilty was when he said it.

Q. When was that with reference to the time you had went to the Brunswick and after Sam had returned from California?

A. I can't remember dates.

Q. Could you fix the date with reference to your

(Testimony of James B. Rennaker.)

return from Great Falls this last time, last Thursday? A. I counted the days I was in there.

Q. I could make it plainer this way: Was it before you went to Great Falls and appeared before the Grand Jury, was it before that?

A. That I was in jail?

Q. No, that you had this conversation with Sam in which you say—(interrupted)

A. It was after I came back.

Q. It was after you came back from Great Falls?

A. From the time they took me over there and put me in front of the Grand Jury.

Q. Yes. After you had come back from Great Falls, had the government made any charges that you had committed perjury or that Sam had procured you to commit perjury back in 1946?

A. Only they gave me a subpoena to go to Great Falls.

Q. That is the only paper the government had given you? A. Yes. [125]

Q. After you got back, you went into Sam's place at the Brunswick? A. I did.

Q. You say you didn't have this conversation that day?

A. He wanted to find out what I did do over there.

Q. That is different again. He asked you if you had been to Great Falls? A. Yes.

(Testimony of James B. Rennaker.)

Q. Did he say he had been away and just returned, anything to that effect?

A. In fact, I knowed he was gone.

Q. Did you talk that over at the first conversation you had with Sam about your being at Great Falls?

A. He wanted to find out what I did say in Great Falls.

Q. I will ask you, Mr. Remaker, if you know whether Sam knew you had been in Great Falls, did he know you had been in Great Falls?

A. He did.

Q. So, he didn't leave for California before you went to Great Falls?

A. Yes, he was in California.

Q. But he knew you had been in Great Falls?

A. He knew it when I got back.

Q. When you got back, that was the morning you went to the Brunswick, isn't it? [126]

A. That's right.

Q. At that time, no statement was made by Sam, or the statement you say he did make, that he would give you \$2,000 to take the rap, wasn't talked about? A. No.

Q. When did you first talk about that?

A. Just before I went to Great Falls to plead guilty.

Q. That is before you and your attorney went to Great Falls? A. That's right.

Q. Have you my independent recollection now

(Testimony of James B. Rennaker.)

of the approximate date? Do you know the month it was in, Mr. Rennaker?

A. I don't know.

Q. Do you know the week?

A. I don't know.

Q. But in any event, you say Mr. Catrino was here in Missoula? A. That's right.

Q. Where was that conversation had?

A. In the car, his car.

Q. Where was the car with reference to any buildings or objects that we might identify? Was it near the Brunswick?

A. I don't remember that.

Q. Do you remember the time of day?

A. No, I don't.

Q. Were you and Sam at the time in friendly terms? [127] A. Yes.

Q. You had renewed your friendship after the break you had when he took the last truck from you? A. Yes.

Q. You renewed your friendship then with Sam? A. Yes.

Q. Had he loaned you any money or assisted you? A. He never loaned me money, no.

Q. He never loaned you any money from the time he took the last truck from you, is that correct? I say, he didn't advance you any money or loan you any from the time he took the last truck to the time you met him out in the automobile after

(Testimony of James B. Rennaker.)
you had returned from Great Falls? Is that correct, Mr. Rennaker? You should know that.

A. I'll admit he has given me money to live on.
Q. He gave you money? A. Yes.
Q. When did he give you money, Mr. Rennaker?
A. When he was trying to tell me this stuff to tell on the witness stand.

Q. Do you want the Court to understand he was trying to get you to tell something?

A. He wouldn't have given me money if he didn't want me to tell something.

Q. Is that a conclusion you have drawn or anything he had [128] stated? Did you feel that way, or did he tell you that? A. He told me that.

Q. He told you that. And notwithstanding the fact he gave you money right along and you turned on him, did you, that is, you went over to Great Falls and testified before the Grand Jury that Sam —(interrupted)

Mr. Angland: Just a minute. I will object to that last question, your Honor, as argumentative.

Court: Yes, I think we are descending into argument and repetition, a good deal of it. We will take time to cool off for a couple of hours.

(Whereupon, at 12:00 o'clock, noon, July 8, 1948, a recess was taken until 2 o'clock p.m., same day, at which time the following proceedings were had:)

(Testimony of James B. Rennaker.)

Mr. Angland: If you have no further cross examination, I have no further examination of this witness.

Mr. Taylor: Nothing further.

Court: Very well.

(Witness Excused)

JOHN I. ROMER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland: [129]

Q. State your name, please.

A. John I. Romer.

Q. Where do you reside, Mr. Romer?

A. I live in Orchard Homes.

Q. Where did you reside on October 20, 1945?

A. On Post Creek.

Q. Post Creek, Montana?

A. That's right.

Q. About 35 or 40 miles from Missoula?

A. 53 miles north of Missoula.

Q. In what business were you engaged on October 20, 1945, at Post Creek, Montana?

A. Farming.

Q. And stock raising?

A. More or less diversified farming. I had cattle, Herefords and dairy cattle.

Q. On October 20, 1945, were you acquainted

(Testimony of John I. Romer.)

with Mr. James B. Rennaker, who has testified in this case? A. Yes, I was.

Q. On that date, October 20, 1945, did Mr. Rennaker haul any cattle for you from Missoula, Montana, to Post Creek, Montana?

A. No, he did not.

Q. Did he haul any for you near that date?

A. I think he hauled cattle for me on April and in May, 1945, and then in January, 1946. [130]

Q. He didn't haul any near the date October 20, 1945? A. No.

Mr. Angland: You may cross examine.

Mr. Taylor: No cross examination.

(Witness Excused)

LEONARD LYTLE,

called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland:

Q. State your name, please.

A. Leonard Lytle.

Q. Mr. Lytle, where do you reside?

A. Out at Missoula Livestock Auction, State of Montana.

Q. Where was that?

A. Out here, Missoula Livestock Auction Company, State of Montana.

(Testimony of Leonard Lytle.)

Q. I believe that is the name of the concern, is that right? A. Yes.

Q. You are employed by the State of Montana?

A. Yes.

Q. In what capacity are you employed by the State of Montana? A. Brand Inspector.

Q. As the Brand Inspector for the State of Montana at the [131] Missoula Livestock Company, do you have in your custody the official records of the brands inspected by the State of Montana at the Missoula Livestock Company on October 20, 1945?

A. I got them for the month of October.

Q. 1945? A. Yes.

Q. Will you look, please, at the record for October 20, 1945? Those are the official records that you have with you, are they?

A. That's right, going out, all cattle trucked out of the yards.

Q. They are official records of the State of Montana? A. That was for October 20th?

Q. Yes. A. What for, who for?

Q. For Parke Davis.

A. 25 head going to Butte, Montana.

Q. Just a minute, Mr. Lytle, let me ask you a question. You have with you the official record of inspections made for Parke Davis on October 20, 1945, do you? A. Yes.

Q. That is the official record of the State of Montana? A. Yes.

(Testimony of Leonard Lytle.)

Q. I will call your attention, Mr. Lytle, to Plaintiff's Proposed Exhibit 3, and ask you if that is the inspection made for Parke Davis on October 20, 1945? [132]

A. That is for truck, you know, that is for cattle shipped by truck.

Q. Shipped out from the Missoula Livestock Company to what point in the state?

A. Butte, Montana.

Q. To Butte, Montana. And what does that record show?

A. Shows how many cattle we shipped over. It was trucked over, left the yards, how many cattle loaded at Missoula and went to Butte.

Q. How many cattle were loaded in Missoula and shipped to Butte? A. 25 head.

Mr. Angland: You may cross examine.

Mr. Taylor: No cross examination.

Mr. Angland: This witness would like to be excused permanently, if there is no objection.

Court: How about the record, what did you do with the record?

Mr. Angland: I didn't offer that in evidence, your Honor. I didn't feel it was necessary to offer the record as long as the witness testified about it.

Court: All right.

(Witness Excused) [133]

FRED A. GREENFIELD,

called as a witness on behalf of the plaintiff,
being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland:

Q. Will you state your name, please?

A. Fred A. Greenfield.

Q. Where do you reside, Mr. Greenfield?

A. 1244 Monroe.

Q. Missoula, Montana? A. Yes, sir.

Q. Were you residing in Missoula, Montana, October 20, 1945? A. I was.

Q. Where were you employed at that time?

A. For the City of Missoula Police Department.

Q. You were a police officer for the City of Missoula on October 20, 1945? A. Yes, sir.

Q. Were you on duty as a policeman in the evening of October 20, 1945? A. I was.

Q. Are you the same Fred A. Greenfield who testified in this Court on March 13, 1946, in the case of United States vs. Sam Catrino and John Reinhard? A. I am. [134]

Q. Mr. Greenfield, do you recall where you were on duty on the evening of October 20, 1945, in the City of Missoula? A. Yes, sir. . .

Q. And were you in the vicinity of the Brunswick Bar on that evening? A. I was.

Q. Were you present when the Indian, Pat Pierre, entered the Brunswick Bar?

A. Yes, sir.

(Testimony of Fred A. Greenfield.)

Q. Where were you at that time?

A. I was on Woody Street right on the corner of Woody and West Railroad at the Keith Store, hotel and store combined. It is in the 600 block on Woody Street.

Q. Will you state to the Court and jury what you observed when you were in that place?

A. Well, I started my beat at ten o'clock—
(interrupted)

Q. Ten o'clock p.m.

A. Ten o'clock p.m., yes, sir, and I changed my beat every night, which was routine, and I was trying doors, and I tried the last door before I got to the hotel door, and was just checking the door at the Keith Store on West Railroad and Woody Street when a car came on West Railroad traveling at a rate of speed. Wondering why all the speed, I stopped and observed this car, and pretty soon he stopped and backed up on the Northeast curb of Railroad, which is rather a high curb, and turned it around and parked it at the Brunswick Bar.

Q. Parked at the curb near the Brunswick Bar?

A. Yes.

Q. Proceed.

A. And wondering why all the haste, I crossed the street to the Brunswick Bar. An Indian boy had gotten out of the car and run into the Bar. I see this boy standing at the bar, and I was looking him over, observing everything, his actions, and I

(Testimony of Fred A. Greenfield.)
see this transaction take place.

Q. What transaction, Mr. Greenfield?

A. Well, there was a transaction taking place there of a bottle, and what it contained, at that time I didn't know until—(interrupted)

Q. Let us go into this. You saw a transaction involving a bottle between what persons?

A. Johnny Reinhard and Patrick A. Pierre.

Q. And that transaction was taking place in the Brunswick Bar? A. Yes, sir.

Q. Near the bar or the middle of the room, or where was it taking place?

A. It took place at the bar.

Q. At that time, where were you?

A. I was standing in the doorway, the north-west doorway on Railroad Street. [136]

Q. Standing in the doorway or entryway into the Brunswick Bar? A. Entranceway, Yes.

Q. Did you see Sam Catrino in the bar then?

A. I did.

Q. Were you acquainted at that time with James B. Rennaker?

A. I had never met the man, I knew who he was.

Q. Did you at that time know who he was?

A. Yes.

Q. Did you observe the persons in the bar that night? A. I did.

Q. Was James B. Rennaker in the Brunswick Bar that night?

(Testimony of Fred A. Greenfield.)

A. That night, no, he wasn't.

Q. Had you on occasion prior to that time seen James B. Rennaker in the Bar? A. Yes.

Q. Did you know what business Rennaker was engaged in? A. I did.

Q. And Mr. Greenfield, you stated you saw a transaction involving a bottle between John Reinhard and Pat Pierre. Now, will you state what you observed?

A. This Indian boy put his hand in his pocket and laid something up on the bar. I later seen the cash register rang up, and the boy started away from the bar, and I stepped out of the entranceway and went over by his automobile, and the boy came out, and as he came out of the entryway, he headed east where the car was just around from the entrance. He came on the run, and when he seen me there, he started to stop and turn around and headed west on Railroad. I ordered him to stop and he did, and I walked up to him and asked him what his name was and he told me freely. I asked his age and he told me that freely.

Q. What did he state his age was?

A. 17 years.

Q. Did you take anything from the boy then?

A. I did.

Q. What did you take from him?

A. I took a bottle of wine away from him.

Q. That was the bottle of wine introduced in

(Testimony of Fred A. Greenfield.)

the case tried in this court on March 13, 1946 as evidence in that case? A. Yes, sir.

Mr. Angland: You may cross examine.

Cross Examination.

By Mr. Higgins:

Q. How were you attracted to the car that the boy drove up there that evening?

A. The reckless manner in which he operated the vehicle.

Q. Where did he park the car in reference to where you were?

A. He backed up on to Woody Street, came across the intersection and backed up on to Woody and West Railroad. There is [138] a high curb there running along the railroad track. It is quite a drop, and one hind wheel went up on the curb, and I was sure he was going to go over the curb, and he cut it around and came on and parked just east of the entrance of the Brunswick Bar.

Q. Was he intoxicated at that time?

A. I wouldn't say he was intoxicated, he had been drinking.

Q. What, if anything else, was in the car when you arrested him and took the wine from him?

A. There was.

Q. What was it?

A. A bottle of whisky and a bottle of wine.

Q. Did he tell you he had walked up to the bar, that is from town? A. No.

Q. Did he admit driving that car up there?

(Testimony of Fred A. Greenfield.)

A. He did not.

Q. What did he say about driving the car up there?

A. May I give this testimony as it was, as it happened, about the car?

Court: Just go ahead and tell the facts.

A. He parked the car, and when he came out, I asked him his age and his name, and he told me all this, and then I asked if he had a driver's license. He answered me, "Yes," and I asked him for it. He gave me the driver's license and what he told [139] me corresponded with the driver's license which he was possessed of then. I asked him if that was his automobile, and he said, "No." I said, "You drove it up here." "No," he says. "I didn't drive it up here," and I was standing and looking at his license, and I says, "Pat, you did drive it up here." "No, I didn't," he said, "I walked," he says, "I don't know anything about this automobile." So, I told him, I says, "Pat, I will have to put you under arrest for possession of a stolen automobile." I took him to the Northern Hotel and called the squad car.

Q. Did you take him to the police station?

A. Yes, sir.

Q. When you arrived at the police station, did you find out that during the time when you had first seen Pierre come up with the car, that this car had been reported stolen?

Mr. Angland: Just a minute, to which we ob-

(Testimony of Fred A. Greenfield.)

ject, your Honor, as being immaterial, not competent in the trial of this case, not proper cross examination, as well as beyond the scope of direct.

Court: I don't know. He is talking about driving the car up there and parking it east of the bar, going in and coming out, and following him to the car and standing there. I think he has gone into the details of what was in the car, what he did, what he was doing, how he came into possession of the car, it is all part of the case. Go ahead. [140]

A. I took him to the police station, and on arrival at the station, I was informed that this automobile was stolen by the desk sergeant, so after he was booked, I told the desk sergeant I was going back up on Woody Street and Railroad to get the car, which I did. I brought the car to the station, removed the whisky and wine and the keys out of it, and shortly the owner of the automobile came into the station. He was notified during the time I left the station to go back after the car.

Q. There is no question in your mind, is there, that that was the car Pierre drove up that evening?

A. No, sir. It was definitely the car he drove up.

Q. You say there was another bottle of whisky and bottle of wine in that automobile?

A. That's right.

Q. Did Pierre, after you got him to the police station, maintain he had never driven that car up there? A. Yes, sir.

(Testimony of Fred A. Greenfield.)

Q. When he drove up to the Brunswick Bar, did he park with the motor running?

A. Yes, sir.

Q. And jumped out and ran around into the bar? A. Yes, sir.

Q. And likewise came out on the run, did he?

A. Yes, sir. [141]

Q. When he saw you, what did he try to do?

A. Tried to run in the opposite direction from me.

Q. Toward the car or away from the car?

A. Away from the car.

Q. He told you he didn't know anything about the automobile you had saw him get out of?

A. Yes, sir.

Q. Well, the next morning, did the Indian police come to the police station and interview Pierre that you know of?

A. I was called to the station the next morning around about ten o'clock.

Q. And was there anything done with the theft charge of the automobile with Pierre?

A. No, sir.

Q. What was done with it?

A. I asked the gentleman that owned the car if he would sign a complaint—(interruption)

Court: I think you have pursued this line of testimony far enough.

(Testimony of Fred A. Greenfield.)

Mr. Higgins: That is all.

Mr. Angland: Nothing further.

Court: You are excused.

(Witness Excused) [142]

PATRICK PIERRE,

called as a witness on behalf of the plaintiff,
being first duly sworn, testified as follows:

Direct Examination.

By Mr. Angland:

Q. Will you state your name, please?

A. Patrick Pierre.

Q. Where do you reside, Mr. Pierre?

A. Camas Prairie, Montana.

Court: What place?

A. Camas Prairie.

Q. Are you a ward of the United States Government? A. I am.

Q. Enrolled on the census rolls of the Flathead Reservation? A. Yes.

Q. And what is your age, Mr. Pierre?

A. Nineteen.

Q. What was that? A. Nineteen.

Q. Nineteen? A. Now, yes.

Q. How old were you on October 20, 1945?

A. Sixteen, or fifteen. No, sixteen, 1945, 1948, sixteen.

Q. And are you the same Patrick Pierre who testified in this court on March 13, 1946, in the

(Testimony of Patrick Pierre.)

case of United States vs. [143] Sam Catrino and John A. Reinhard? A. Yes.

Q. Now, before the trial of that case on March 13, 1946, had you ever seen either Sam Catrino or John Reinhard? A. Yes.

Q. Do you recall the evening on which you were taken to the City police station by Mr. Greenfield?

A. No, I don't.

Q. Well, did you make a purchase of some wine in the Brunswick Bar on October 20, 1945?

A. Yes.

Q. Who did you buy it from?

A. Johnny Reinhard.

Q. Was Sam Catrino in the bar when you bought it? A. I don't recall.

Q. After you bought that wine from John Reinhard on October 20, 1945, did you see John Reinhard again? A. Yes, I did.

Q. Where did you see him?

A. Plains, Montana.

Q. Where? A. Plains, Montana.

Q. Do you recall about how long afterwards that was? A. No, I don't.

Q. Well, was it before Christmas of that year?

A. I believe it was.

Q. Would it be in the month of December?

A. I don't recall the month, but I think it was before Christmas.

Q. And you saw Mr. Reinhard at Plains, Montana. Who was with him at that time?

A. I didn't know this fellow that was with him.

(Testimony of Patrick Pierre.)

Q. Do you know him now, do you see him in the courtroom?

A. Well, I didn't recognize him.

Q. You don't know any of the three gentlemen here? Were any of them with Mr. Reinhard?

A. I don't believe I could recognize him now.

Q. Was anyone else with them, with Mr. Reinhard? A. No, just two.

Q. Was Fred Old Horn along? A. Yes.

Q. Then there were three? A. Three.

Q. And did you have any conversation with John Reinhard at Plains, Montana?

A. Yes, I did.

Q. Were the three persons, John Reinhard, the person you don't recognize, Fred Old Horn, and you, were you all present? A. Yes, we were.

Q. What was the conversation you had with John Reinhard? [145]

Mr. Higgins: We shall object to that testimony in behalf of Mr. Catrino, the defendant Catrino, unless—(interrupted)

Court: Very well, he is not present, evidently, so, of course, it doesn't have any bearing as far as he is concerned.

Mr. Taylor: We feel at this time, if the Court please, the testimony, while it was not admissible as to Mr. Catrino, notwithstanding that fact, it would be prejudicial on the two counts in which he is an alleged defendant.

Court: I don't think so. This is an entirely dif-

(Testimony of Patrick Pierre.)

ferent offense, isn't it? This is the third count of the indictment.

Mr. Higgins: Apparently it is the third count, and for that reason we object on the part of Catrino.

Court: Objection overruled. Proceed with the examination of the witness.

Q. Now, Mr. Pierre, do you recall my last question? A. Yes.

Q. Can you answer that question?

A. Well, we talked about the time I bought the wine in the bar at the Brunswick Bar.

Q. Yes. What was said?

A. Well, we were to come to Missoula, and I was supposed to make a statement on that.

Q. You will have to speak just a little louder, Mr. Pierre. You were to come down to Missoula and make a statement?

A. To Reinhard's lawyer or attorney here. [146]

Q. You were to come down and make a statement to Reinhard's lawyer? A. Yes.

Q. What was that statement to be?

A. I was to come down here and make out a statement and sign it saying that I got the wine from a Mexican in the bar.

Q. Were you offered anything if you would come to Missoula and make that statement?

A. Yes.

Q. What were you offered?

A. One hundred dollars.

(Testimony of Patrick Pierre.)

Q. Was there anything else said during that conversation that you now recall?

A. No, I guess not.

Q. Were you told who would give you the hundred dollars? A. No.

Q. And did you go to Mr. Reinhard's lawyer and make that statement? A. No, I didn't.

Q. Did you take the hundred dollars?

A. No, I didn't.

Q. Was there any discussion during that conversation concerning Mexicans, Mr. Pierre?

A. Well, yes.

Q. What was said, if you recall? [147]

A. I was to testify that there was a lot of Mexicans in the bar that night that I bought the wine.

Q. Was there something else you were going to say about that? A. Yes.

Q. What else?

A. They also told me to say that I asked for the wine in the Mexican language.

Q. Do you know the Mexican language?

A. No, I don't.

Q. Do you know any Mexican words at all?

A. No.

Q. Were you told what words to use?

A. I was told, but I don't know what they are now.

Q. You don't know now what they were?

A. No.

(Testimony of Patrick Pierre.)

Q. Did the other man with Mr. Reinhard, not Fred Old Horn, but the other man, did he say anything to you?

A. No, he didn't, I don't recall.

Mr. Augland: You may cross examine.

Cross Examination.

By Mr. Taylor:

Q. Do I understand you to say, Mr. Pierre, that you don't recall going to the police station on the night of the 20th of October?

A. I do recall that. [148]

Q. I beg your pardon?

A. I recall going down there.

Q. You recall you were taken, or you recall you went to the police station? A. Yes.

Q. Do you recall an officer apprehending you as you came out of the Brunswick? A. Yes.

Q. And did you run away from him?

A. I don't remember running.

Q. I beg your pardon.

A. I don't remember running.

Q. You don't remember running? A. No.

Q. Do you remember of driving up to the Brunswick in an automobile? A. Yes.

Q. Did you drive the car? A. Yes.

Q. That the officer talked to you about?

A. Yes.

Q. Where did the officer pick you up, as you came out of the bar, or across the street?

(Testimony of Patrick Pierre.)

A. No, as I came out of the door.

Q. As you came out of the door? [149]

A. Yes.

Q. You didn't attempt to go in the opposite direction, did you? A. I don't remember.

Q. Were you intoxicated?

A. I had quite a few drinks.

Q. Quite a few drinks? A. Yes.

Q. But after you got to the police station, do you recall anything being said about the automobile by the officer? A. No.

Q. Do you recall you told the officer, or said anything to the officer up at the Brunswick where you had parked the car that you didn't drive that car? A. Yes.

Q. Do you recall that? A. Yes.

Q. Did you tell the officer you didn't drive the car up there? A. Yes.

Q. Had you driven the car? A. Yes.

Q. But you told him you didn't?

A. That's right.

Q. You think it was sometime about, around Christmas time or before that you saw Mr. Reinhard? A. Yes, I did.

Q. And I think you stated it was at Plains?

A. I didn't live at Plains.

Q. But you say you saw him there?

A. Yes.

Q. Where did you live at that time?

(Testimony of Patrick Pierre.)

A. I was up at Duprees Company at Dog Lake.

Q. Duprees. That is between Plains and Hot Springs, Caimas? A. Yes.

Q. What time of day did you meet them?

A. It was after dark, I don't remember the time.

Q. Where did you meet them?

A. About a mile out of Plains.

Q. About a mile out of Plains? A. Yes.

Q. Had you had an arrangement to meet them?

A. No, I hadn't.

Q. How were you, in a house or on the road?

A. No, I was driving a car.

Q. You were driving an automobile?

A. Yes.

Q. Anyone with you? A. No, I was alone.

Q. Were you going toward Plains?

A. I was going home. [151]

Q. You were going home? A. Yes.

Q. How were they travelling?

A. They had an automobile.

Q. They had an automobile? A. Yes.

Q. You recognized Mr. Reinhard?

A. Yes.

Q. But you didn't recognize the other man?

A. No.

Q. Where did this Old Horn, as you call him, Fred Old Horn? Yes.

Q. Was he with you or them?

A. He was with Reinhard.

(Testimony of Patrick Pierre.)

Q. With Reinhard? A. Yes.

Q. There were three of them in the Reinhard car? A. Yes.

Q. Who was driving the Reinhard car?

A. Reinhard.

Q. Reinhard driving the car? A. Yes.

Q. Did he overtake you?

A. No, I happened to be parked along side the road when they came down. [152]

Q. Was it dark? A. Yes, just dark.

Q. About what time of the day would you say, Mr. Pierre? A. I can't recall the time.

Q. It was after the sun had gone down?

A. Yes.

Q. Did you have lights on? A. Yes.

Q. Did they have lights on? A. Yes.

Q. Did you see the car as it overtook your car, or approached your car, did you see it following you or coming along the road? A. Yes.

Q. The car stopped, did it? A. Yes.

Q. And did all three of the men get out of the car? A. No, they didn't.

Q. Who got out of the car?

A. Fred Old Horn.

Q. Fred Old Horn got out of the car?

A. He was with Reinhard.

Q. At that time did you know Reinhard was in the car? A. No, I didn't.

Q. You didn't know? A. No. [153]

(Testimony of Patrick Pierre.)

Q. Old Horn got out. Did he come over to your car? A. Yes.

Q. Did he talk to you? A. Yes.

Q. Later what did you do, if anything?

A. I got in Reinhard's car.

Q. You got in Reinhard's car? A. Yes.

Q. Was this other occupant of the car in the car when you got in?

A. There were three of them after.

Q. When you got in there were three?

A. No, when I got in, there were four.

Q. You say you can't identify the third man?

A. No.

Q. You can't identify him? A. No.

Q. In what seat were you in the car?

A. Right side in the hindseat.

Q. Who was on the left side in the hind seat?

A. Fred Old Horn.

Q. Where was Mr. Reinhard?

A. Driving the car.

Q. He was sitting in the front seat?

A. Yes, on the left. [154]

Q. This other man you cannot identify was on the left side of Mr. Reinhard?

A. On the right side of Mr. Reinhard.

Q. The right side of Mr. Reinhard?

A. Yes.

Q. Then the conversation occurred you related here, that is, Mr. Reinhard wanted you to come to town and make a statement about what you

(Testimony of Patrick Pierre.)

knew or what occurred on the night of October 20, 1945? A. Yes.

Q. Did you remember at that time what did occur on the night of October 20th?

A. I knew what happened.

Q. Your mind was vivid, that is, you had a vivid recollection of what took place, except you didn't remember that the officer—that you ran away from the officer?

A. I don't believe I ran away from him.

Q. You don't believe you ran away from him?

A. No, I don't.

Q. You say Mr. Reinhard first wanted you to come to Missoula and make a statement as to what took place on October 20, 1945, is that correct?

A. Yes.

Q. What was the words he used to you, Mr. Pierre?

A. He told me to go down there and tell his lawyer that I bought the wine in this bar from a Mexican. [155]

Q. I thought you stated that he first told you he wanted you to go down to Missoula and make a statement as to what took place on the night of October 20, 1945? A. Yes.

Q. Well, now, did he say that to you, Mr. Pierre?

A. He said that much, but he also said—(interrupted)

Q. Well, now, we will come to that, but he did

(Testimony of Patrick Pierre.)

tell you he wanted you to go to Missoula and make a statement to his lawyer as to what occurred insofar as you were concerned on the night of the 20th of October, 1945, is that correct?

A. That's right.

Q. Yes. Then later you say—withdraw that question. Was there further conversation qualifying that or anything?

A. Yes, there was.

Q. What was the conversation?

A. He told me to testify that there was a lot of Mexicans in the bar the night I bought this wine from him.

Q. What will you say as to that? Were there any Mexicans in the bar? A. No.

Q. You are quite satisfied as to that?

A. Yes.

Q. Had you been drinkinon the night of October 20th? A. Yes. [156]

Q. Had you driven rapidly up to this bar?

A. Yes.

Q. Drive pretty fast? A. Yes.

Q. Did you run on to the curb or anything of that kind? A. Yes.

Q. You jumped out of the car and ran into the Brunswick?

A. The car wasn't on the curb when I got out, I don't think it was.

Q. You don't think it was. But in any event.

(Testimony of Patrick Pierre.)

from where the car stopped, did you go, run, or travel rapidly from the car to the Brunswick?

A. I don't believe I ran.

Q. You don't believe you ran. Coming out, did you run? A. No, I don't think so.

Q. You didn't drive the car back to the police station, did you? A. No.

Q. Nor did the officer? A. Not then, no.

Q. You walked to the police station, did you?

A. I believe we went in the police car.

Q. You believe, do you know, Mr. Pierre?

A. In the police car, patrol car.

Q. In the patrol car? A. Yes. [157]

Q. Did you tell the officer you didn't know anything about that car? A. At that time, yes.

Q. At that time? A. Yes.

Q. But at the same time you knew you drove that car up there? A. Yes.

Q. All right. Now, you say that he told you that night that he would give you a hundred dollars?

A. The night he come up to see me.

Q. Yes, at plains. A. Yes.

Q. He met you about a mile from Plains, is that it? A. Yes.

Q. Why didn't you take the money, didn't you want it? A. I didn't want it that bad.

Q. Had you ever been in any trouble before this with the law? A. Not before then.

Q. That is the first time you had ever come in contact with the law? You want the Court to

(Testimony of Patrick Pierre.)

understand that? A. Yes, at the time.

Q. Have you lived all of your life in Camas Prairie, Camas Hot Springs?

A. I lived a few years in Hot Springs. [158]

Q. Are they used—Hot Springs, some call it Camas?

A. There is Camas Prairie and Camas Hot Springs.

Q. They are separate communities, or do they adjoin? A. No.

Q. Are you acquainted with Mr. Larsen, who is now sheriff of Sanders County? A. Yes.

Q. Camas is in Sanders County, is it not?

A. Yes.

Q. What did you tell them when they said they would give you \$100?

A. At the time I told them I would take it.

Q. You told them you would? A. Yes.

Q. What did they say—was Mr. Reinhard doing the talking then? A. Yes.

Q. Did the other gentleman who was with him who you cannot identify, did he do any talking?

A. I don't recall.

Q. You don't recall? A. No.

Q. Was Mr. Old Horn a friend of theirs or a friend of yours?

A. He is my brother-in-law.

Q. Had you talked with him about this matter before this particular night you say they drove down? A. No. [159]

(Testimony of Patrick Pierre.)

Q. Have you talked with him since?

A. Fred Old Horn?

Q. Yes, have you men talked it over?

A. No, we never talked about it.

Q. To whom did you make this statement or report that this Mr. Reinhard and Mr. Old Horn and a stranger, or someone you don't recognize, had attempted to give you \$100?

Mr. Pease: Objected to as assuming a fact not testified to by the witness, namely that Old Horn participated in the attempt to procure his testimony.

Mr. Taylor: I will qualify that.

Court: I think you might change that a little.

Q. Did you tell anyone, or who did you tell that John Reinhard had overtaken you about a mile on the other side of Plains and you had a conversation with him, and that he told you he would give you \$100? Did you tell that to anyone?

A. I spoke to the Indian policeman about it.

Q. You told the Indian police? A. Yes.

Q. At that time, or at any time before you talked with the Indian police, was there anything said by the authorities here in Missoula about having you arrested for taking somebody's automobile that night? A. No. [160]

Q. There wasn't anything said about that?

A. No.

Q. Was anything ever done about that?

A. No.

(Testimony of Patrick Pierre.)

Mr. Taylor: That is all.

Court: Any further question?

Mr. Angland: I think not, your Honor.

(Witness excused.)

FRED OLD HORN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. Will you state your name?

A. Fred Old Horn.

Q. That is two words, is it, Old Horn?

A. Yes, sir.

Q. Mr. Old Horn, where do you live?

A. In Camas Prairie, Montana.

Q. Are you acquainted with Patrick Pierre?

A. Yes.

Q. Did you know him in December, 1945?

A. Yes, I did.

Q. You will have to speak a little louder for the jury. A. I do know him. [161]

Q. Did you know him in December of 1945?

A. Yes, I did.

Q. Do you know John Reinhard?

A. No, I am not acquainted with him.

Q. Have you ever seen John Reinhard before today, the man in the center here?

A. Well, yes, I did.

Q. Do you recall seeing him in December, 1945?

A. I don't remember the date.

(Testimony of Fred Old Horn.)

Q. You don't remember the date?

A. I see him about three or four times around here in Missoula.

Q. Down here?

A. Yes, walking around the street.

Q. Did you see him up near Plains, Montana, or Camas Prairie, Montana, in December, 1945?

A. I don't remember the date.

Q. Did you hear Patrick Pierre just testify?

A. Yes.

Q. Do you remember being in the car when Patrick Pierre was met on the road near Plains, Montana? A. Just Pierre?

Q. Just Pierre.

A. I know we picked him up.

Q. We picked him up. You mean by that you were with someone else and picked up Pat Pierre?

A. Yes.

Q. Who were you with?

A. Johnny Reinhard, I guess it was.

Q. Who else? A. I don't know.

Q. You don't know the other man?

A. No.

Q. When did you get in the car with John Reinhard?

A. I was in the house and they came up looking for Pat there.

Q. At what house? A. Our house.

Q. At your home? A. Yes.

Q. And who else lived there? A. My wife.

Q. Where is that?

(Testimony of Fred Old Horn.)

A. In Dupree's Lumber Company near Dog Lake, Montana.

Q. John Reinhard with someone else came to your house?

A. No, they didn't come up to the house. I was just going to catch a ride down town and I thought I would catch a ride with them.

Q. How did you know they were looking for Pat Pierre?

A. I was pretty drunk. They asked if I knew where Pat lived and I told them I believed he went to Plains. [163]

Q. Who said that? A. What?

Q. Who told you they were looking for Pat Pierre and that they wanted to find him?

A. They didn't say if they were looking for Pat. Johnny asked me where Pat was and I told him he went to Plains.

Q. Who asked you?

A. Johnny Reinhard. I don't know him, that is all I know is his name.

Q. Is that the man sitting in the middle of those three men (Indicating defendants)?

A. I don't know, I was pretty drunk that night.

Q. Did you get in the car with them?

A. Yes, I got in the car with them two there. I don't know which two, though.

Q. Is John Reinhard one of them?

A. He must have been.

Q. You know whether he was there or not, don't you, Fred?

(Testimony of Fred Old Horn.)

A. He was in the car. I wouldn't testify—I believe he was. I was pretty drunk. I was drunk when they got up there and I was drunk when we got here too.

Q. Did you show John Reinhard where Pat Pierre was?

Mr. Higgins: Just a moment. We object to that question as assuming a statement made by the witness not in the record. He doesn't know. [164]

Court: Well, ask him how he found Pierre, where and when they found him, if they saw him.

Q. Did you see Pat Pierre that evening?

A. I don't know, it was that evening or the next morning. We met him down here by the road this side of Plains someplace.

Q. This side of Plains? A. Yes.

Q. On the highway. When was that?

A. When?

Q. Yes?

A. That is what I don't recall, whether it was night or morning.

Q. How long after you got into the car?

A. That is what I don't know, I was drunk.

Q. Do you remember what was said after Pat Pierre got into the car?

A. No, I passed out. I came to myself in Missoula. I don't know if they brought me up here or not, but I believe they did.

Mr. Angland: Cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.)

GEORGE P. RHOADES,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. State your name, please.

A. George Rhoades.

Q. Where do you reside, Mr. Rhoades?

A. Missoula, Montana.

Q. What is the nature of your employment?

A. Special Agent of the Federal Bureau of Investigation.

Q. As an agent of the FBI, have you had assigned to you for investigation the case now on trial? A. I have.

Q. When was that first assigned to you for investigation?

A. It was first assigned to me—I don't have my assignment card.

Q. I don't mean as an official channel. When were you first requested to investigate this case?

A. Immediately after the trial was over.

Q. What trial?

A. When the Sam Catrino and John Reinhard trial was over in 1946.

Q. Was it the same day or later?

A. The same day.

Q. At whose request?

Court: I think so. Sustain the objection. [166]

Court: I think so. Sustain the objection.

(Testimony of George P. Rhoades.)

Q. Now, Mr. Rhoades, in the course of your investigation of this case, did you seek out Mr. James B. Rennaker, or did he come to you and volunteer the information?

A. I sought him.

Mr. Higgins: Just a minute. Object to that as incompetent, irrelevant and immaterial and having no probative value on the issues involved in this proceeding.

Court: I don't know whether there is or not. Neither of us can tell at this particular stage.

Mr. Angland: I will be glad to state our basis in the absence of the jury.

Court: I think perhaps we had better do it. Ladies and gentlemen, will you retire to the corridor and just remain without the hearing of what we are discussing here for a few minutes, but be ready to come back as soon as the officer notifies you.

(Jury retires from Courtroom.)

Mr. Angland: May it please the Court, on cross-examination, an attempt was made, I believe, through examination, to show animosity on the part of Mr. Rennaker, and the inference given that the trucks were taken from him and as a result, this man is being prosecuted, Mr. Catrino is being prosecuted. This evidence is offered to contradict that and to corroborate the answers given by Mr. Rennaker on cross-examination by counsel. [167]

Court: You mean a statement was made by

(Testimony of George P. Rhoades.)

Rennaker to Mr. Rhoades? You want Mr. Rhoades to testify to statements made to him by Rennaker, who is not on trial here?

Mr. Angland: No, your Honor. I want to show as a result of animosity, Rennaker did not come to the FBI and seek prosecution of Catrino, but rather that Mr. Rhoades sought out Rennaker in order to investigate this case.

Court: Couldn't you do that by showing what Mr. Rhoades did in the course of his investigation? During his testimony it would be disclosed, wouldn't it, he sought him out and went to see him in the course of his investigation?

Mr. Angland: That is what I meant to ask. That is as far as I want to go.

Court: You didn't put it that way.

Mr. Angland: We would make a motion as to Mr. LaValley. We have no proof as to him.

Court: Motion is granted and Mr. LaValley is dismissed as a defendant in the case.

(Whereupon, at 3:15 p. m., July 8, 1948, a 15 minute recess was taken.)

(Jury returned to the Courtroom.)

Court: The jury weren't in the room when the motion was made dismissing the case as to the defendant LaValley, so they are advised that the motion was granted to dismiss the case as to the third defendant, LaValley. You may proceed with the examination. [168]

Q. (By Mr. Angland) Mr. Rhoades, in the

(Testimony of George P. Rhoades.)
course of your official investigation of this case, did you contact James B. Rennaker?

A. I did.

Q. By virtue—in your official capacity, by virtue of his coming to your office and volunteering a statement, or did you have to go out and seek him out? A. I went out to his place.

Mr. Angland: You may cross-examine.

Cross Examination

By Mr. Taylor:

Q. At the time you went out to his place, Mr. Rhoades, did you know there was friction existing between Mr. Sam Catrino, the defendant, and Mr. Rennaker? A. No, I did not.

Q. You didn't know there was any friction as to money affairs as between the two? A. No.

Q. When did you contact Mr. Rennaker?

A. March 11, 1947.

Q. March 11, 1947? A. Right.

Mr. Taylor: That is all.

(Witness excused.) [169]

Mr. Angland: The government rests.

Court: Do you desire to make your statement.

Mr. Higgins: Your Honor, at this time, we would like to file a motion for acquittal, and if you will grant a few minutes, we would like to argue it in the absence of the jury.

Court: Very well.

(Jury retires from Courtroom.)

[Title of Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

Come now the Defendants and move the Court to order the entry of a judgment of acquittal upon the following grounds:

1. That the evidence is insufficient to maintain a conviction under Count Number One of the Indictment against Defendants, Sam Catrino and John A. Reinhard, or either.
2. That the evidence is insufficient to maintain a conviction under Count Number Two of the Indictment against the Defendants, Sam Catrino and John A. Reinhard, or either.
3. That the evidence is insufficient to maintain a conviction under Count Number Three of the Indictment against the Defendants, John A. Reinhard and Lester LaValley, or either.

J. D. TAYLOR,
GEORGE F. HIGGINS,
Attorneys for Defendants.

Served July 8, 1948, 3:15 p. m. Harlow Pease,
AUSA. [170]

Court: Very well, you may proceed Mr. Higgins, or Mr. Taylor, whoever wants to speak on this motion.

Mr. Taylor: Well, the Court please, the motion, as the Court will see, is predicated on the fact that there is no competent evidence as against the defendants Catrino and Reinhard on the first count.

Now, the first count charges subornation of perjury, in that they procured one Rennaker to testify falsely in the case that was tried in this Court. Now, we take the position, the Court please, that we might eliminate the rule that requires two witnesses in most states to establish perjury, and we will assume, the Court please, to establish perjury, that it can be established by the testimony of one witness and corroboration. We go a step further and ask ourselves what is the rule and how much evidence is required to establish and prove the crime of subornation of perjury. Now, it is probably plain that, if the Court please, under our Constitution, that requires as much as the establishment by evidence of perjury and treason. All right. And I think a great many courts hold that it requires, in order to establish the crime as the government desires the crime to be established, the testimony of one competent witness and corroboration.

Now, the corroboration, the Court please, must be such as to connect this defendant with that particular crime. Now, what do we have here? If the Court please, we have the testimony of one witness, a Mr. Rennaker. I would hate to think, if the Court pleases, that my liberty, or the liberty of any citizen, could be taken from him on the uncorroborated testimony of Mr. Rennaker.

Now, what are the corroborating facts, if the Court please? I don't think that there is a corroboration, I don't think that the government has

proved that this man Rennaker committed the crime of perjury in the trial of the case on March 13, that is, they haven't established that fact as the law requires as protection for all of us against the crime of perjury, and so far as the crime of subornation of perjury, as against these two defendants, if the Court please, there is an entire absence of corroborating testimony.

The Court observed Mr. Rennaker as he testified. He didn't come out positively, honestly, honorably and above board. He equivocated here, there and in several instances. Now, if our life and our liberty is to be held so cheaply that we could be deprived of it on testimony of that nature, if the Court please, why we are all in jeopardy.

As to Mr. Reinhard, on Count 1 and Count 2, there is an entire absence of testimony that he participated in any way or manner in procuring Mr. Rennaker to testify falsely. The only testimony that the government has produced insofar as Mr. Reinhard is concerned, is on the morning that the case was tried, he came down there and to the Brunswick and that Mr. Rennaker was there, but not one scintilla of evidence, not an inference or innuendo that he did say anything. [172]

And on the third count, if it please the Court, as to offering Mr. Pierre on behalf of Mr. Reinhard \$100. Well, now, Mr. Pierre testified himself. He testified that they wanted him to come to Missoula and make a statement to the attorney. Following that conversation he said that he was offered, they

told him they would give him \$100, but he didn't take it. Now, we feel, if the Court please, that from the point of view of the government of the United States, that they shouldn't ask that any citizen be convicted of the crime of subornation of perjury unless the case is clear, convincing and that they establish that fact beyond a reasonable doubt.

Now, in this particular case, the state knows, the government knows the same as I do that the man Rennaker, upon whom their whole case is predicated, by his testimony, his action, the interest that he had in the proceedings, shouldn't carry great weight; that the testimony of the witness Pierre is likewise of the same character, and the corroboration on Pierre of Little Big Horn, or the gentleman they had here that said he was so drunk that night he doesn't know anything about it, and there is an entire lack of corroboration. The only attempted corroboration in the entire case submitted by the government was to corroborate Mr. Rennaker in his statement that he did swear falsely on March 13th. They attempt to corroborate that, that it was impossible, he wasn't there in that particular institution, didn't see the things done that he said were done, or the statements made that he testified were made. That is the extent of the corroboration of the original perjury upon which the subornation of perjury is predicated, and we feel, if the Court please, and I think we can say advisedly that the Courts lean very strongly to the proposition that we are attempting to get away from in

this case, that there must be some strong corroborating testimony to establish the fact; that we are secure in our person, secure in our liberty as against a perjury charge to the extent that there must be more than one witness to establish perjury and in subornation of perjury there must be competent testimony and that there must be corroboration, and there is an entire lack of corroboration, in our opinion, if the Court please, in this case.

Mr. Pease: Of course, if your Honor please, the counsel has completely ignored the record in this case. To begin with, the verdict of the jury in the Indian liquor case is not only corroboration of the government witnesses who testified here, Greenfield and Pierre, but it is an adjudication that the testimony of Reinhard was false given on the Indian liquor case. There is an absolute adjudication under the authorities that this is false without our ever putting Rennaker on the witness stand to say it is false. He is corroborated by Greenfield, he is corroborated by Pierre. And in the circumstances of this case, if your Honor please, we have an all fours proposition with the McCoy case, just decided by the Circuit Court of Appeals. The attempt to influence, the offering of money, if your Honor please, is stronger than the McCoy case—there was no offer of a bribe—but here there was an offer of money, not only solicitation, so that by the circumstances and by direct testimonial evidence there is ample corroboration in this record; and I would say if there is not sufficient evidence

in this case to sustain a verdict of guilty upon the charge contained in count 1 and the charge contained in count 2, which, of course, is the same facts from different legal reasoning, no case could ever be made.

I observe this, too, that counsel has not dwelt on the legal requirements of proof of count 2, which is not subject to the very drastic requirements of the law with reference to perjury and subornation of perjury. That is a plain statute that doesn't have any requirement connected with it, and the testimony of one credible witness is sufficient to sustain a conviction of count 2; and unless Mr. Angland has something further, we submit the motion should be denied.

Mr. Angland: I think of this, your Honor—there was another statement I don't find here. In a statement made by counsel with reference to the last count, I think he has misunderstood the record. He says the only request made of Pierre was that he come to Missoula and make a statement. My statement—my recollection is he was interrupted, but he did complete that statement, "and come to Missoula and make a statement to the lawyer in accordance with the story Reinhard gave", not a statement of facts involved in the transaction of October 20, 1945, but rather the fabricated story Mr. Reinhard had concocted for him.

Court: Do you want to add anything?

Mr. Higgins: There can be no question that, as to count 1, subornation, assuming there is some

corroboration as to the falsity of the statements made by Rennaker, that is, if he testified falsely in the other case, if we assume there is some corroboration as to that, I would like to have counsel for the government point out to the Court one iota of evidence that corroborates the statement that Rennaker made that he was procured by Reinhard and Catrino to testify falsely. As to procurement, there is not one iota of evidence that he was procured by any other person than just his own statement, and courts have repeatedly held it isn't sufficient. Certainly, there can be no question but that count 1 should be withdrawn from the jury.

Count 2, it goes back to the original argument. If your Honor will look over the language of the charging part of the indictment, I don't care whether you call it obstruction of justice, whatever you call it, the charge is subornation of perjury.

Court: Oh, no, that is based on a definite statute. That [176] is the reason why I overruled your motion. There is a definite statute, a separate and distinct offense.

Mr. Higgins: It is our position it charges the same offense.

Court: That is my opinion in regard to it.

Mr. Higgins: Certainly as to count 1, there is no corroboration as to procurement. The only evidence is Rennaker's own testimony, and that isn't sufficient.

Court: Well, of course, so far as the perjury, there must be proof of the fact that perjury was

actually committed. Now, the judgment roll has been introduced here, and it is found that there was a charge there of selling liquor to an Indian ward of the Government of the United States, and the defendants plead not guilty. That brings to issue, of course, all the material allegations of the information. It was tried and against these two defendants. The jury found, of course, that the defendants were guilty. Now, included in that verdict would also be an adjudication that the defense was false and they didn't believe it, and that the testimony of Remaker as to how the transaction occurred, and that a Mexican purchased the wine in question and afterwards gave it to Pierre, was false. It seems to me that that is res adjudicata. It is a thing adjudicated and it stands and there can be no further question raised as to the fact of the commission, or as to the guilt of the defendants and the commission of perjury there by [177] reason of the verdict of the jury that they didn't believe the defense that was offered and that it was untrue. Otherwise, they would have been obliged to find for the defendants.

Now, then, the other question is subornation. Subornation of perjury and perjury itself are so closely connected that it is difficult to separate them and the requirements, as I understand the law, are the same for perjury and subornation of perjury. There must be corroboration. Now, either by one witness, corroboration by one witness or more than one witness, or if not by another witness, then by

circumstances that satisfy the minds of the jury that there is there present a substantial corroboration. Now, of course, this whole affair is so interwoven, so many circumstances connected with it, the testimony here would almost require a reconsideration and sort of an analysis to see wherein there is corroboration that the Court might consider substantial corroboration, that is, I mean, the corroboration of Rennaker that there was a procurement here, the circumstances that relate to his inability, for instance, to have been present and to have given any such testimony as was procured and presented in the original case.

Now, if the defendants, one or both of them—they were tried together. There was a defense. They must have procured and presented it. They presented this man Rennaker, who said that the sale of the wine was made to a Mexican and not to the Indian ward of the government. The verdict of the judgment was that that was not true. But I think the authorities will hold that it is adjudicated, res adjudicata of the facts that were presented there. Now, it seems to me that there is corroboration there in that very adjudication of the testimony of Rennaker. Then, too, the facts presented here show where he was, what he was doing, and the defendants must have known, of course, he wasn't there at all and couldn't have been there because the evidence here conclusively shows that he hauled a load of cattle to Butte that night. He didn't come back, or start back, until

sometime early in the morning of the 21st of October, 1945. All the circumstances and associations, transactions, business transactions, between Rennaker and the defendants, especially the defendant Catrino, shows a close connection, and if they didn't procure the testimony, who did? How did it happen? It was there and in their presence.

I think I would have to give further consideration to that motion before I could pass upon it. I think I will defer action on the motion. You may resume the motion later on for dismissal, but not for the present, I think I should overrule it for the present and require you to present your defense and then at the conclusion of the case, if we find a different situation, why I'll see what action will be taken at that time, so you may call in the jury.

Mr. Higgins: May we have an exception, your Honor?

Court: Yes, certainly. [179]

(Jury returns to the Courtroom.)

Court: You may proceed with your statement to the jury.

Mr. Taylor: This case now stands like this. The evidence in behalf of the defendants will be this: Now, the charge is made by Mr. Rennaker, who testified here, that Mr. Catrino procured him to testify falsely in the case that was tried in this Court on the 13th day of March, 1946. Now, the testimony in behalf of Mr. Catrino will be that this is not true, that he didn't do so, and as to Mr. Catrino's reputation for truth and veracity, we will show you

that he bears in this community a reputation for truth and veracity, and at the same time that this Remaker bears a bad reputation for truth and veracity in the community here in Missoula where he resides. That evidence will disclose that Mr. Reinhard, on the morning of March 13, 1946, went to the Brunswick to bring the witnesses down, among whom was Mr. Rennaker, at Mr. Rennaker's request; that he requested he had no means of transportation and requested that they come and get him.

All right. We further expect to show that for some considerable time, as was related here by the witness Rennaker, Mr. Reinhard, or Mr. Sam Catrino had financed him in the purchase of a couple of trucks; that he carried him along, and that he was to repay him gradually from the hauling account with the Daly people; that before, even before this trial of March 13, 1946, that Mr. Catrino was dissatisfied with the [180] proportionate part of the earnings of this truck as operated by Mr. Rennaker in transporting stock for the Daly people, and they had altercations and that there was friction, and that after, sometime later, why Mr. Catrino took from Mr. Rennaker the trucks, and from that time on, Mr. Rennaker was seeking vengeance from Mr. Catrino, and that there was a motive in Mr. Rennaker's mind in doing what he did do in going and claiming now that he was induced to testify falsely at the investigation of Mr. Catrino. Now, if we establish those facts, of course,

we will naturally assume you will return a verdict in our favor. Thank you.

Now, if the Court please, in our testimony, I might say we are a little bit mixed up as to the time. We had our witnesses, some of them, subpoenaed for four o'clock today, and the officer to whom the subpoenas were given for service, the Marshal, is unable to contact two or three of our character witnesses.

Court: You can put those on later.

Mr. Taylor: It may be the testimony will not be in its natural sequence.

Court: Very well, I don't think there will be any objection to it, would there, of counsel?

Mr. Angland: No objection. [181]

JOHN REINHARD

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Higgins:

Q. Will you state your name, please?

A. John Reinhard.

Q. Where do you reside, Mr. Reinhard?

A. 332 LeVasseur Street.

Q. How long have you lived here in Missoula?

A. I came here in 1918.

Q. And where have you been employed in Missoula?

A. I worked for J. B. Haviland for about 15 years, and during the last six months I have been

(Testimony of John Reinhard.)

working for my brother, Carl Reinhard, who runs a tin shop.

Q. Recently have you been working for Mr. Haviland?

A. No, not in the last six months.

Q. You were in the service during the last war?

A. Yes.

Q. Were you unable to be employed in his shop by reason of the fact he couldn't get materials when you came back? A. That's right.

Q. At that time you started working for Mr. Catrino? A. That's right.

Q. Are you acquainted with Mr. Rennaker?

A. Yes. [182]

Q. How long have you known him?

A. I would say three years or more.

Q. During the time you worked at the Brunswick Bar, was he a frequent visitor there?

A. Yes, he was.

Q. Both in the daytime and at night?

A. Yes.

Q. Were he and Sam engaged in some kind of trucking business together?

A. Yes, they were. It is the way I understood when I was working there.

Q. Do you know about when that commenced?

A. I would say about three years ago or more, that is when it commenced.

Q. Do you know when it was terminated, when it ended?

A. Well, when it was terminated, that was after

(Testimony of John Reinhard.)

March 13, 1946, about six months afterwards, after that date.

Q. Was it sometime after that?

A. Yes, it was sometime after that.

Q. Bearing in mind that the case that has been referred to was tried in March, 1946, do you know if Mr. Catrino and Mr. Rennaker had been having some real serious discussions and disputes over the trucks and how they were being operated and how the money was being disbursed therefrom?

Mr. Angland: Just a minute, have you fixed the time for that, Mr. Higgins?

Mr. Higgins: I beg your pardon, I believe it is fixed.

Court: Any objection?

Mr. Angland: I want to object to that your Honor, the difficulty they might have been having before March 13, 1946, would be irrelevant in this case.

Court: That was before March 13, 1946?

Mr. Angland: That is the question, I believe.

Mr. Higgins: It is for the purpose, your Honor, of showing that the feeling at that time was not particularly friendly and we feel it is proper in view of what has been said by the attorneys for the government.

Court: I think perhaps some reference to the time and place of the disagreement might be mentioned, the circumstances. You may answer the general question if there had been a disagreement before that time and then follow it up.

(Testimony of John Reinhard.)

Q. Had there been a disagreement before that time, Mr. Reinhard that you know of?

A. Before what?

Q. March 13, 1946?

A. No, I couldn't say, I couldn't swear.

Q. But you know that there had been difficulty long before Sam had taken the trucks away?

A. Yes, that is what I had heard. [184]

Mr. Pease: I move to strike the answer as hearsay.

Court: Yes, I think so.

Q. Did you ever have occasion, Mr. Reinhard, to be present when Sam and Rennaker would be arguing over the truck deal and how it was getting along?

A. Well, Sam used to tell me, you know—(interrupted)

Mr. Pease: Just a minute, we move that be stricken as hearsay, not responsive to the question which calls for a yes or no answer.

Court: Yes, I think so.

Q. I am just asking now with reference as to what you know yourself, John.

(Previous question repeated by reporter.)

A. Yes.

Q. You have heard Mr. Rennaker testify here this morning? A. Yes.

Q. He said you came out to his house to pick him up the morning the case was tried on March 13, 1946. A. I did.

Q. How did you happen to go out there?

(Testimony of John Reinhard.)

A. I seen Mr. Rennaker on the night before and Mr. Rennaker asked me to come out and to pick him up, and I was supposed to pick up some other lady that lived out on South 12th Street, Rhoda Wells. She was, you know, a witness in the case. So, I went over to Jim's house. It was between nine and ten—I just [185] don't remember the time, but it was between nine and ten—and Jim didn't have on his shirt or shoes yet, and he told me, he says—we got talking about Rhoda Wells—and he said, "You go over and pick her up," and he said, "I'll take the truck and I'll meet you down at the Brunswick." I says, "Okay, Jim," and I went down there and picked up Rhoda Wells.

Q. Did he come down then in his own truck to the Brunswick? A. Yes.

Q. You heard his testimony here this morning where he inferred you had encouraged him to testify falsely in the other case?

A. Yes, I heard that.

Q. John, I will ask you now to tell the Court and jury whether or not at any time you suggested to Rennaker that he in anyway testify falsely at the trial of the other case here in this Court?

A. Well, I'll tell you. I was supposed to have sold this Indian a quart of wine on Saturday night, and they didn't serve the warrant until on Monday afternoon until four o'clock, and so then I couldn't think back who was in the place, because you don't pay no attention to who is in the place all the time. People come and go. Like Jim Rennaker, one day

(Testimony of John Reinhard.)

he would go out on a hauling job and he would come in and have a few drinks, then when he would come in from the hauling job, he would stop again and probably stay until two o'clock, and, well, he just kind [186] of made a habit of that, so I couldn't swear if Jim Rennaker was in there that night or not.—(interrupted)

Mr. Pease: If the Court please, this is a long narrative, and I don't think it is responsive to the question, and we would have no opportunity to object to hearsay matter the way he is running on. I object to any further answer at this time.

Court: I don't know. It seems to me it is rather a round-about way to answer the question, but maybe he is coming to it in his own way, and if counsel thinks so, why we will let him go a little further.

Mr. Higgins: That is my thought, your Honor.

Court: Go ahead. Make it as brief as you can, get to the point and come to the answer as soon as you can.

A. Anyway, then, Jim, he came in on—I can't say if it was on Monday night or Tuesday night, it has been so long ago—and I guess he heard that we was picked up or charged—(interrupted)

Mr. Pease: If the Court please, we move to strike "I guess" and so forth as a conclusion and hearsay.

Court: Yes, it is far afield. I think you had better put questions to him and try to elicit the answers you want.

(Testimony of John Reinhard.)

Q. Did you at any time, John, ask Rennaker to come up into this court and testify to any facts that were false? A. No, I never.

Q. Did Rennaker tell you and Sam also that he was there that night and that an Indian came up to him and asked him to buy [187] some liquor, and he said, "No," and that later on a Mexican went and bought it for the Indian and gave it to the Indian?

Mr. Pease: Objected to as leading.

Court: Yes, I think so. I will sustain it as a leading question.

Q. What, if any, statements were made to you by Rennaker which caused you to have Rennaker to be a witness in that case?

A. Well, I have to go around about it again.

Court: Just mention what statements he made that caused you to feel—that caused him to be a witness in the case.

A. I overheard him talking with Sam and I overheard Jim say to Sam that he was in there that night, and I wasn't right there, but I was standing not very far from them, I would say three or four feet from him, you know. I overheard them talking, and I overheard Rennaker say about some Indian being in there and about some Mexican, and so then about two or three days later, why me and Jim got to talking and he said he was going to be a witness for me and Sam.

Q. Did he at that time or any other time tell you what he was going to testify to?

(Testimony of John Reinhard.)

A. Well, not exactly, no.

Q. At any time did you suggest to him what he should testify to? A. No.

Q. That is true as to the morning of the trial or any other [188] time?

A. At the morning of the trial when he was down there, I don't think there was hardly anything mentioned about court or anything.

Q. That was merely a meeting place to come to the courtroom? A. That's right.

Q. Did you hear the Indian testify here on the stand, Pierre, with regard to all he had to say about you? A. Yes.

Q. Did you at any time go down to Plains and seek Pierre? A. I did.

Q. When was that?

A. It was about a week and a half or a week, rather, after they had served the warrant.

Q. Would that have been sometime the first part of December or the last part of November?

A. They served the warrant on the 21st of October, wasn't it?

Q. In any event, what is your best recollection as to what time of year you went down to Plains?

A. About the first of November, I imagine.

Q. Did you see Pierre on that occasion?

A. I did.

Q. Where was he? A. He was on the road.

Q. How did you find him? [189]

A. I drove up. I was up in the Brunswick bar and I seen Les LaValley and I asked him if he

(Testimony of John Reinhard.)

knew anybody by the name of Patrick Pierre, and he says, "I do," and I said, "Where does he live," and he said, "Up at Arlee, Montana," and I asked Lester if he wouldn't ride up with me, and he said he would. When we got up to Arlee, it was the wrong Pat Pierre. We found out from there that he lived up at Dog Lake so I asked Les if he wouldn't ride up and we drove up to Dog Lake and we met Old Horn.

Q. Is that the one who just testified on the stand?

A. That's right, and Old Horn knew Pat Pierre and he told me he was down at Plains and he offered to ride down with me and find Pat Pierre. On the way down through Plains, Old Horn said, "Here he is now in that car," so I stopped and got out, and Pat Pierre, he come over toward me in the car and we was standing around the car, and I asked him how that thing happened, because just like I said before, I was supposed to have sold this Indian wine on Saturday night and they didn't serve the warrant until Monday afternoon around four o'clock and I couldn't remember of no Indian being in the bar there, so that is why I drove up and asked him how that happened. He said, "Well, John, I am going to tell you how it happened. I was over next door drinking with some Mexicans," and he said, "The Mexicans and a red-headed woman wanted to come over to your place, so," he said, "we all went over there." And he said, [190] "We was in a booth," and he said, "The

(Testimony of John Reinhard.)

redheaded woman went up to the bar and she got beer and brought it in the booth." Then he said, "They wanted to get a quart of wine, so," he said, "I came up to you and I said, 'Vino Petillio'", and, of course, that is about all that I know because we have done a lot of business.

Q. Is that Mexican?

A. Yes. So, I misunderstood him, he said, and I was just going to give him just a small glass of wine, and he said, "No, no, vino petillio, like this" (indicating), and he said then I knew what he meant and so then he said I reached down behind the bar and gave him a quart of wine and he gave me two dollars, and he says when he walked outside the bar, he says, "That is when I got picked up."

Q. What was his condition when you met him on the highway as to whether he was sober or drunk?

A. He wasn't sober and probably wasn't drunk, but he was drinking.

Q. Did he and Old Horn then come back to Missoula with you that night?

A. Yes, Old Horn and Pierre asked if they couldn't ride into Missoula with me so that I brought them into Missoula.

Q. Was there any statement made by you to Pierre, Old Horn or anyone else, about giving Pierre or anyone else \$100 to come in here and testify falsely in the Indian liquor case in [191] which you were charged?

(Testimony of John Reinhard.)

A. There wasn't.

Q. Did you offer him any money, John?

A. I did not.

Q. Did you say anything to him about coming in and testifying falsely in that case?

A. No, I did not.

Q. You heard him testify on the stand?

A. I did.

Q. Would you say he was telling the truth or lying? A. He wasn't telling the truth.

Q. Mr. Reinhard, I will ask you again if you, at any time or in any manner, suggested to Mr. Rennaker or asked him or by any means whatever expressed to him that you wanted him to come in to this court and testify falsely in the Indian liquor case in which you were charged?

Mr. Pease: Objected to as repetition. It has been asked three times already and answered.

Court: Yes, I think so. He said he didn't do it.

Cross-Examination

By Mr. Angland:

Q. Mr. Reinhard, how did you go from Missoula to Plains? A. In a car.

Q. Whose car? A. Sam Catrino's. [192]

Q. Who accompanied you on the trip?

A. Lester LaValley.

Q. Now, the reason you went up there, as I understand what you have stated in response to Mr. Higgins' question, was that you couldn't remember what had occurred on the Saturday night in question? A. That's right.

(Testimony of John Reinhard.)

Q. On October 20th, you didn't know whether you had sold any wine to an Indian, or whether you hadn't, is that right? A. That's right.

Q. That is what happened? A. Yes.

Q. Did you remember the group when you talked to Pierre, did you remember Pierre and the Mexicans and redhead woman being in there?

A. No, I didn't.

Q. You didn't recall that?

A. No, I didn't recall that.

Q. Did you recall then that Pierre had been in there and said—what are those Mexican words you used? A. Vino petillio.

Q. Those are Mexican words, are they?

A. Yes.

Q. What do they mean, do you know?

A. Bottle of wine. [193]

Q. Did you remember the Indian boy coming to your bar when he refreshed your recollection on it?

A. Well, there we had a lot of Mexican trade at the time and a lot of Mexicans would come up to the bar and ask me the same question—not the same question, but the same words—and wanted a bottle of wine, so that I couldn't say I remembered Pat Pierre because—

Q. You weren't sure? A. I wasn't sure.

Q. Do you remember testifying in this court on March 13, 1946? A. I do.

Q. Did you tell the jury and Court at that time you weren't sure?

(Testimony of John Reinhard.)

A. I think I told the jury and court at that time that I didn't sell any wine to any Indian.

Q. I will ask you whether or not this is what you stated, I am reading from page 66 of the transcript: Question: "This Indian boy that claims you sold him this bottle of wine, tell the Court and jury whether it is a fact." Answer: "I didn't sell him no wine. I can tell him from a Mexican." "Some of the Indians are hard to tell?" That is the next question. Your answer: "Yes, but this guy isn't hard." Is that what you stated to that Court and jury at that time? A. Yes. [194]

Q. Now, when you stopped the car on the road and you saw Pierre and you asked him—I believe you stated you asked him how this thing happened. Is that what you said?

A. Yes—no, first I told him my name and I told him who I was and he knew me then and then I asked him how this thing happened.

Q. Just what did he tell you, now?

A. He said, "John, I fooled you." He said he was over there next door drinking with some Mexicans and a redheaded woman and he says that the Mexicans wanted to come over next door, "over there to your place," and he says, "I went over there with them." He said, "We went in the booth," and he said, "The redheaded woman went over to the bar and she got the beer," and then he says, "I wanted to get a quart of wine, so I went up to the bar and I said, 'Vino Petillio' ". He said, "You made a mistake and were going to give me

(Testimony of John Reinhard.)

a small glass of wine, and I says, 'no, no, petillio' ", and he showed me with his hands like that (indicating), and that I knew what he meant, and that I reached down behind the bar, got the wine and gave him the wine and he gave me \$2.00 and then he went out.

Q. Then, after you had talked with Pierre, did you make any suggestion to him there to come to Missoula and make a statement to your lawyer?

A. No.

Q. You never requested him at all? [195]

A. No.

Q. After he told you that and refreshed your recollection, you weren't sure as to whether he had done that or not, were you? A. No, I wasn't.

Q. Now, you stated also, you couldn't, after you were arrested on Monday, you couldn't think back as to just who was in the place Saturday night?

A. That's right.

Q. And you weren't just sure how many people were there or who was in there?

A. That's right.

Q. When were you arrested on Monday, what time of the day were you arrested on Monday?

A. Around four o'clock, a little after four o'clock.

Q. Less than 48 hours after the offense had taken place? A. Yes.

Q. Do you remember now who was there on Saturday night, October 20th?

(Testimony of John Reinhard.)

A. I don't, no, I don't remember who was there.

Q. Do you know how many people?

A. No, I couldn't say.

Q. Did you know on the day you were arrested how many people were in there?

A. Well, the only thing, that happened on Saturday night, [196] October 20th, that is—(interrupted)

Mr. Angland: Just a minute, the answer isn't responsive.

(Question repeated by reporter.)

Mr. Higgins: Let him answer. You asked the question.

A. Well, I couldn't tell you just the exact number, but I would imagine there would probably have been about ten or twelve.

Mr. Pease: Move to strike as not responsive. He was asked to state whether or not he knew on a certain day, not what he guesses or imagines.

Court: Yes—(interrupted)

A. I can't swear, so I will say no. I wouldn't swear to anything I don't know for sure.

Q. Did you state to the jury that tried the case on March 13, 1946, Question: "What would be your estimate as to how many there would be in there at 11 p.m." Answer: "There is a bar about 24 feet long and the bar was filled and there were some Mexicans sitting against the wall and in the booths." Is that what you stated?

A. At what time of the night?

Q. Well, it says about 11 p.m. That is the tes-

(Testimony of John Reinhard.)

timony, the transcript of what you stated to the Court and jury on March 13, 1946. You may read it if you like. A. No, that's all right.

Q. How long have you worked for Mr. Catrino?

A. It wasn't very long, I would say about six months.

Q. Have you worked for him since?

A. Not after the trial, I didn't, not after March 13th.

Q. You never went back to work for him after the trial here? A. No.

Q. Have you been quite friendly with him since? A. Yes.

Q. You were rather closely associated?

A. I wouldn't say too closely, but we are just, you know, friends.

Q. What is the first time that you heard of any difficulty between Catrino and Reinhard or Catrino and Rennaker, I beg your pardon, due to their arrangement on the trucking business?

A. Well, I couldn't say, I couldn't even tell you the month because that has been so long ago that—

Q. You just don't know.

A. I just don't know.

Q. Now, you overheard Sam Catrino talking to Rennaker about what had happened on the evening of October 20th, 1945? A. Yes.

Q. How long after the 20th of October, 1945, did you hear that conversation?

A. Well, they served the warrant on a Mon-

(Testimony of John Reinhard.)

day, and I couldn't say if it was on Monday evening or on a Tuesday evening.

Q. It was either that night or the following night? [198] A. That's right.

Q. What did you hear said?

A. Well, this Jim said that—he was talking about some Mexican and about some Indian, but I didn't get the whole facts, I didn't—you know—

Q. You didn't pay much attention to what they were talking about? A. No.

Q. It wasn't of any particular concern of yours when they discussed what had happened Saturday evening?

A. They was talking and I didn't want to be butting in. I was standing drinking at the bar with some other fellow.

Q. When was the first time you heard Mr. Rennaker tell the story he told the Court and jury here on March 13, 1946? When did you first hear that story? A. When did I first hear it?

Q. Yes. A. Who from?

Q. From Mr. Rennaker, or did you hear it first from Catrino. Which one told you the story first?

A. Jim Rennaker.

Q. When did he tell it to you?

A. About a week following after they had served the warrant.

Q. Sometime during the following week? About a week later? A. Yes, probably. [199]

Q. Was Sam Catrino present when you heard the story?

(Testimony of John Reinhard.)

A. No, he wasn't. Me and Jim, we was drinking at a bar, at the Brunswick there, you know, just me and Jim Rennaker, and he said, "I am going to be a witness for you." I says, "Are you?" and he said "Yeah." He said, "You know I was in here that night," and he said, "Some Mexican come up to me"—no, he said, "Some Indian," he said, "That this Indian wanted me to buy him some wine." I said, "Did he?" He says, "Yes." He says, "Yes," but he said, "I didn't do it."

Q. Well, now, I think you have completed the answer and then some. That is about a week after you heard Jim Rennaker and Sam Catrino talking about the matter?

A. Maybe four or five days after.

Q. Sometime within a week after?

A. That's right.

Q. You had heard them talking about the matter? A. That's right.

Q. When was the first time you and Sam Catrino and Rennaker together went over the story?

A. Me and Sam Catrino and Jim Rennaker—we never did go over the story together.

Q. You never heard Rennaker tell the story to both of you at one time? A. No.

Q. It was told you more than once, wasn't it?

A. We kind of talked it over, me and Jim

Q. Was it polished a little as time went along, or did it stay exactly the same?

A. Just the same.

Q. There was no change in that story from the

(Testimony of John Reinhard.)

first time you heard it until it was told on the witness stand here in the courtroom on March 13, 1946? A. No.

Q. Not an iota?

A. In the first place I couldn't tell you, I couldn't just remember exactly word for word what Jim Rennaker did say, because that has been so long ago that you know I couldn't just tell you word for word what was said, but I could just give you an idea.

Q. That trial was quite an event in your life, wasn't it, on March 13, 1946?

A. That's right.

Q. You remember Jim Rennaker testifying in this courtroom, don't you? A. I do.

Q. Was the story he stated in court substantially the same story he had told you the first time you had talked to him about what had happened that Saturday night?

A. Well, it probably wasn't just word for word, no.

Q. He changed an "and" or a "the" here and there? [201]

A. But I can say it was.

Q. It was the same story?

A. It was the same story.

Q. Now, on the morning of the trial, you did see Jim Rennaker down in the Brunswick Bar?

A. I did.

Q. Was anybody having a drink at that time?

A. Yes, me and Jim Rennaker and Mrs. Mur-

(Testimony of John Reinhard.)

phy and Rhoda Wells, we all had a couple of drinks before we come up here.

Q. Mrs. Murphy also testified in the case, I don't believe Rhoda Wells did?

A. That's right.

Q. But you had a couple of drinks, and I believe you said on direct examination there was no discussion at all as to this case that morning, as to the case going to be tried at ten o'clock that morning, no discussion of that?

A. Not that I can remember of.

Q. Well, what did you talk about that morning?

A. Well, just like anybody else would talk at a bar.

Q. Well, anybody coming into court as a witness or a defendant at ten o'clock in the morning, what would they talk about. You say just like anybody else would talk. What did you talk about if you didn't talk about the trial or what the witnesses were going to testify to?

A. Kind of generally we was wondering what kind of a jury [202] we was going to draw, or who else we could get as a witness, or as a character witness and stuff like that.

Q. Witnesses were important, weren't they?

A. Character witnesses.

Q. Witnesses were important, any witnesses who knew any fact? A. That's right.

Q. And it would be important to know what that witness would testify about, wouldn't it, and that

(Testimony of John Reinhard.)

is the thing you people were talking about, wasn't it?

A. We wasn't talking about what we was going to say.

Q. But you were talking about the case?

A. We were talking about the case.

Q. Then when you told Mr. Higgins on direct examination that your discussion did not concern the case, you didn't tell him the truth, did you?

A. Here is what I thought Mr. Higgins meant: If that we was talking about what each other was going to say upon the witness stand. That is what I thought he meant, but we wasn't talking about that.

Q. But you were talking about the case?

A. Yes, generally.

Q. Mr. Reinhard, when you took Sam Catrino's car up to Plains to find Pat Pierre, did you have his consent to take the car? A. I did.

Q. And he knew what you were going up there for? [203] A. He did not.

Q. Just loaned you the car?

A. That's right.

Q. Did he usually loan you the car?

A. Yes, yes, lots of times.

Q. I think you stated awhile ago that your testimony on the other trial was true testimony, didn't you? A. Yes.

Q. Just as the rest of what you have told the Court and jury today? A. That's right.

(Testimony of John Reinhard.)

Re-Direct Examination

By Mr. Higgins:

Q. In the fall of the year around about the 20th of October, and especially in 1946, wasn't it true that there were a number of Mexicans here in Missoula working in the beet fields?

A. That's right.

Q. And did those Mexicans, and especially on Saturday night, a great many of them gather at Sam's place?

A. Some nights the house would just be packed with them.

Q. Why was it that they gathered there in particular, do you know?

A. Yes, I can tell you the reason why. Sam can speak Italian and it is spoken close to Mexican, it is a Spanish language. Well, Sam, he can speak their language, and those Mexicans [204] who were working here at that time were all from Mexico and they didn't know much English, and that is why they came down to his place.

Q. You were convicted in that case and fined \$150.00? A. That's right.

Q. Mr. Angland seems to have tried to make a great deal out of a difference in your testimony now as compared with what you did in the other case. I asked you, "They charge you with selling a young Indian boy some wine on the 20th of October, 1945?" Answer, "Yes, sir." "Is that true or false?" Was your answer, "I think it is false."?

Mr. Pease: I am objecting to this on the ground

(Testimony of John Reinhard.)

there is no foundation laid. It is not impeachment.

Mr. Higgins: I want to bring out the fact that Mr. Angland wasn't fair.

Mr. Angland: I think Mr. Angland was fair. He read from the record.

Q. (By Mr. Higgins): Was that your answer?

Mr. Pease: Same objection. This is not apparent impeachment. No foundation laid for it.

Court: Well, of course, if Mr. Angland brought out some testimony on the previous trial that might have been unfavorable to the witness, on re-direct by the counsel for the defendant, he could show some other testimony.

Mr. Pease: The whole record has been read.

Court: Some part of the record would put a more favorable interpretation on it.

Mr. Pease: That is in the record, your Honor. It is a matter of argument.

Court: I think on re-direct examination, Mr. Higgins had the right to call his attention to another part of the record if it explains or was a different statement.

Mr. Pease: Very well.

Q. John, likewise as to the number of people in there, your recollection as to the number that would be in there would be better in March, 1946, than it would be at this late date?

Mr. Angland: To which I object as calling for a conclusion of the witness.

Court: Yes, we can all guess at that sort of thing.

(Testimony of John Reinhard.)

Q. Was it your habit there at that bar to sell to Indians? A. No, it wasn't.

Q. You had two big signs in the doorways of the entrance for Indians and minors to keep out?

Mr. Angland: To which we object, your Honor, as leading.

Court: I don't know. You may show that they were not selling to Indians, objected to it, and had a sign for Indians to keep out. It may have some bearing on the situation.

Q. When the Indian was referring to the Mexican term he had used, he said he had fooled you, is that right? A. That's right. [206]

Mr. Higgins: That is all.

Mr. Angland: Nothing further.

(Witness excused.)

SAM CATRINO

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. You may state your name to the Court and jury. A. Sam Catrino.

Q. Where do you live, Mr. Catrino?

A. 412 Alder Street.

Q. That is in Missoula? A. That's right.

Q. How long have you lived in Missoula?

A. I have been here since 1921.

Q. That would be about 27 years?

[(Testimony of Sam Catrino.)]

A. Yes.

Q. Now, in what business have you been engaged since you came to Missoula?

A. I have been in the restaurant business all the time.

Q. When did you acquire the Brunswick, that is, the place you had in October, 1945?

A. I was there since 1941. [207]

Q. How? A. 1941.

Q. That comprises what, what does the Brunswick consist of? A. Just the bar now.

Q. How? A. Bar.

Q. Is that on what floor—is there more than one floor in the Brunswick, one-story?

A. No, two story.

Q. And the bar occupies the first floor?

A. That's right.

Q. And what is on the second floor?

A. A rooming house.

Q. Have you engaged in business in the Brunswick ever since you acquired it?

A. Yes, since 1941.

Q. In October, 1945, who, if anyone, was working for you in the bar? A. 1945?

Q. Who?

A. I don't know if John was working at that time or not. I think John worked at that time, 1945.

Q. Mr. Reinhard? A. Yes.

Q. You recall, of course, that shortly after the 20th of [208] October, 1945, you were arrested,

(Testimony of Sam Catrino.)

were you? A. Well, that is, was on Monday.

Q. It was on Monday? A. That's right.

Q. Do you know what day of the week the 20th of October was? A. I don't know.

Q. Later on you were tried, were you?

A. Yes, sir.

Q. In this court? A. Yes, sir.

Q. And that would be the following March of 1946? A. Yes, sir, 1946.

Q. I think the date is March 13 of 1946?

A. Yes.

Q. You recall that? A. That's right.

Q. You are acquainted with Mr. Rennaker?

A. Yes, sir.

Q. When did you first become acquainted with him, Mr. Catrino? A. About 1944.

Q. 1944? A. I believe.

Q. Were you associated with him in any business ventures?

A. No. In 1944 he come to me, he wants truck.

Q. A truck?

A. Yes, he wanted me to buy him a truck. He had been coming to me for pretty near one week, so finally I decided I would buy him one truck.

Q. What was he doing with the truck, or what was he going to do? A. Haul stock.

Q. Haul stock? A. Yes.

Q. What arrangements, if any, did you have with Mr. Rennaker about he paying you for the money you advanced to buy the truck?

A. Well, to begin with, to tell the truth about

(Testimony of Sam Catrino.)

it, he had no money. I bought his house, \$250.00 down, and then I helped him with truck, and I said, "Now, you can get by." He was hauling for Daly's all around. After about a month more he wants another truck, so I got another truck. Of course, you know, not very much coming in, but I pay out all the time though.

Q. What arrangement, Mr. Catrino, did you have with him whereby he was to pay you? How was he to pay you?

A. I said—I told him you can pay when he got a chance.

Q. When he got a chance? A. Yes.

Q. Was there any particular source that you were to get the [210] revenues from the work that he did?

A. No, it was on his own hook. If I was going to get interest on it, that was all I wanted.

Q. He was to pay you back? You weren't giving him the money? A. No.

Q. He was to pay you back?

A. That's right.

Q. Was he to pay you gradually or as he made it? A. As he made it.

Q. Do you know whether he was to haul live-stock for the John R. Daly Company?

A. Yes.

Q. Was there any deal whereby you were to get any part of what he earned hauling for John R. Daly?

A. For two or three months it was pretty slow

(Testimony of Sam Catrino.)

payment. I said, "You better do something with the truck." I said, "I want you to do—if you give me Daly's work, if you pay me, it will be all right." Some months he pay half, some months he pay all. Sometimes he come back, "Sam," he says, "I am short \$20." I cashed check for what he paid then he kept going.

Q. Now, following the 20th day of October, 1945, and the Monday you say you were arrested— A. Yes.

Q. And later on in March of the following year, 1946, you [211] were tried in this Court for selling liquor to an Indian? A. Yes, sir.

Q. I think the sale was not made by you, was it, Mr. Catrino? A. No, sir.

Q. You are not the bartender?

A. No, I was not bartender.

Q. Now, Mr. Rennaker testified in that case, did he not? A. Yes.

Q. And he testified, and did you hear him testify? A. Yes, I did.

Q. I will ask you to tell the Court and jury whether at that time you knew whether the testimony he gave in Court was true or false?

A. I think it was false.

Q. Did you know at that time he testified?

A. At that time, you mean, the first case?

Q. Yes. Now, at the time he testified in that first case, did you know whether the testimony he gave was true?

(Testimony of Sam Catrino.)

A. It was supposed to be. That is what he told me.

Q. You say he told you that? A. Yes.

Q. When did Mr. Rennaker first talk to you, Mr. Catrino, about testifying, when did he first talk to you about it?

A. That was on—let's see, I think it was around the 26th or 27th of the month. [212]

Q. Of October? A. October.

Q. That is shortly after you were arrested?

A. Yes.

Q. All right, you heard him testify that you procured him to do that, you procured him to give false testimony. What have you to say to the Court as to that, Mr. Catrino?

A. No, sir, I never approached him.

Q. I beg your pardon.

A. I didn't approach a witness to lie, I said, "You just tell what you know."

Q. Did he tell you, Mr. Catrino, the story, did he tell you what he knew when you talked with him? A. That's right.

Q. He told you that? A. Yes, sir.

Q. Did he tell you the same story he told on the witness stand in March, 1946, had he previously told you the same thing? A. That's right.

Q. Now, did you in any way, Mr. Catrino, attempt to get him to come into Court and tell, perjure himself for you, did you ever do anything to try to get him to do that? A. No, sir.

Q. You heard him testify that between the time

(Testimony of Sam Catrino.)

you first [213] talked with him—that is, you told him he had to do that, you had a mortgage on his trucks, or something to that effect? Did you hear him testify? A. Yes.

Q. Did you hear him tell that in Court here?

A. That's right, I hear that.

Q. What will you say to the Court and jury as to whether or not you had that talk with him?

A. I never told him such a thing.

Q. You heard him say that, in response to questions by the attorneys, you had gone over and reviewed the testimony with him at different times up to the time of the trial? A. No, sir.

Q. That you had talked it over and you would tell him what to say? A. No, sir.

Q. I will ask you to tell the Court and jury how and when you first knew what Mr. Rennaker said he was going to testify to. When did you first know that, Sam?

A. It was on the 21st of—what month was it, December—no—after we got picked up, you know.

Q. That is after you were arrested, you call that "picked up," Sam? A. That's right.

Q. After you were arrested was it you had this conversation, [214] that you had this talk with Mr. Rennaker about it?

A. He told me, he says, "An Indian asked me for a bottle of wine."

Q. I beg your pardon.

A. He asked me, "Sam, an Indian asked me for a quart of wine." I asked him if he would go wit-

(Testimony of Sam Catrino.)

ness for me. He says, "Yes." That is all I know about it.

Q. Did he say anything to you about what he knew about it?

A. No, never said anything to me about what he knows about it, no sir.

Q. When did he first tell you what he knew about it, if he did tell you?

A. Four or five days after we was picked up we was talking about it. I says, "We got arrested the other day," and he found out we got under bonds, and I says, "Some Indian got a quart of wine," and I said, "Nobody knows which ones, nobody can testify after two or three days if the Indian got a bottle of wine," and I said, "You want to go and be witness for me?" He said, "Sure I go witness for you."

Q. An Indian got a quart of wine?

A. Yes, sir.

Q. Did you offer him any money?

A. No, sir.

Q. You heard him testify that recently after he come back from Great Falls that you offered him money to take the rap, told [215] him you would give him \$2,000 if he would take the rap?

A. No, sir, I never offered him one cent.

Q. You say, Mr. Catrino, that you financed or bought the trucks for him? A. Yes, sir.

Q. With the agreement that he would pay it back? A. Pay it back.

Q. Well, later on, did you and Mr. Rennaker

(Testimony of Sam Catrino.)

have any difficulty about he paying you, did you have any trouble about it, did he pay you, or didn't he pay you?

A. Most of the time he pay what he can, but sometime, you know, he was away behind, there was no payment made, you know, but he made payments once in awhile, he'll pay me, but sometimes he go months without paying things. They was taking my money just the same. I said, "We have got to do something, Jim, we just go in the hole all the time." I say, "I got to pay off repairing trucks. You keep most of the money." I say, "I never will get even with you."

Q. What, if anything, did you do Sam about the truck or trucks? Did you repossess or anything, take it from him?

A. No, he made remark—you mean about taking away?

Q. Did you take them away? A. Yes.

Q. Did you take them both at the same time?

A. No, about a month apart, I guess. [216]

Q. What truck did you take first?

A. I took the GMC Semi.

Q. Then later? A. I took the Chevrolet.

Q. What effect did that have on Jim's business?

A. The Chevrolet had a second mortgage on, and I had to pay the Chevrolet people who had the first mortgage before I can take it away. Of course, I just sold them out and wanted to clear it up and get through with this outfit.

(Testimony of Sam Catrino.)

Q. What was Jim's attitude toward you then, or how did he feel about it?

A. He got sore then.

Q. Was that after or before March 13, 1946?

A. After. It was around the first part of 1947.

Q. In 1947? A. Yes.

Q. All right, at that time did he make any statements to you, what he was going to do or anything of that kind?

A. No, I never seen him for two or three months after that.

Q. Had he remained in Missoula?

A. I don't know whether he was working for somebody else or not. I never seen him for quite awhile.

Q. You never saw him for quite awhile?

A. Never saw him for quite awhile.

Q. Have you seen him within the past month or two? Have you [217] talked to him or him to you? A. He come in one time.

Q. Come in where, Mr. Catrino?

A. He keep away sometime, just like be friendly, you know, just let it go. I say, "Hello, how you go, how you work, so long." That is all.

Q. Do you still have those trucks?

A. No, sir, I sold them all.

Q. You sold them all. Did you hear the testimony of Mrs. Rennaker that you kept on paying—giving him money to live on?

Mr. England: Mrs. Rennaker never testified to that.

(Testimony of Sam Catrino.)

Mr. Taylor: Didn't she?

Mr. Angland: We will object to that as not being a statement of record, your Honor. I don't think the record will show Mrs. Rennaker made any such statement.

Court: I think Rennaker on the stand himself admitted he received some money.

Mr. Taylor: Yes, Rennaker, I misunderstood.

Q. I will withdraw that and ask if you heard the testimony of Jim Rennaker that you were paying him money? A. No, sir.

Q. Did you hear that?

A. Yes, I hear that.

Q. What have you to say to the Court and jury as to that?

A. I never give him one cent, give him nothings. [218]

Q. I will ask you, Sam, if on the morning of the 13th, at the Brunswick, that there were a number of people there, and among them was Mr. Rennaker, and a conversation took place in which he said he didn't want to testify and you said you would give him a couple of shots and that would brace him up.

A. I never gave him myself, I never. I wasn't even tending bar at that time. We had a bartender over there, but I was in and out. We all come together when court was going in the morning.

Q. Was any statement made in substance that you would give him two or three shots and brace him up? A. Unless he was sick or something.

(Testimony of Sam Catrino.)

Q. Do you know what it means, the expression, "brace him up"?

A. I know what "brace him up" means.

Q. Kind of bolster him up. Did you ever make any statement to him of that sort? A. No.

Mr. Taylor: That is all.

Court: Are your witnesses mostly character witnesses tomorrow?

Mr. Taylor: I think the rest of them are all character witnesses, if the Court please.

Court: We will finish tomorrow, will we?

Mr. Taylor: Yes.

Court: I think perhaps we had better suspend until the [219] morning.

(Whereupon, at 5:00 o'clock p.m., July 8, 1948, an adjournment was taken until 10:00 o'clock a.m. July 9, 1948, at which time the following proceedings were had, the jury being present, and the defendants being present in person and represented by their counsel):

SAM CATRINO

resumed the witness stand for

Cross-Examination

By Mr. England:

Q. Mr. Catrino? A. Yes.

Q. I believe you stated yesterday you are the proprietor of the Brunswick Bar? A. Yes.

Q. The licenses in the Brunswick Bar are in

(Testimony of Sam Catrino.)

your name? A. Not now.

Q. Not now in your name? A. No.

Q. Whose name? A. My wife's name.

Q. When did you transfer them?

A. Last month.

Q. Do you own the buildings in which the Brunswick Bar is located?

A. We both own the buildings.

Q. What is that? [220] A. Both together.

Q. You and your wife? A. Yes.

Q. You rent out the second floor of the rooming house to someone else? A. Yes.

Q. You run the bar downstairs?

A. A restaurant beside that.

Q. You rent that, too? A. Yes, sir.

Q. Who do you rent the second floor to?

Mr. Higgins: Just a minute, to which we object as incompetent and immaterial.

Court: I don't know. There has been a good deal said about the Brunswick Bar and the location and so forth. I think I will permit him to inquire who owns the place, who is in control of it, who is responsible for it, especially at the time of this occurrence. It isn't material what is going on there now.

Q. On October 20, 1945, did you rent the upstairs on the second floor?

A. Clarence Schmidt owned the building at that time.

Q. Did you own the building on March 13, 1946?

A. No, sir.

(Testimony of Sam Catrino.)

Q. Do you know who the tenant of the second floor of the [221] building was at that time?

Mr. Higgins: To which we object, your Honor. There is no probative value.

Court: I think he has already stated somebody by the name of Schmidt, wasn't it?

Mr. Angland: I think that was the owner of the building.

Court: I will let him answer.

A. Mabel Coleman, I think.

Q. She rents the second floor? A. Yes.

Q. Do you know what business is carried on there? A. Rooms.

Q. A rooming house? A. That's right.

Q. Now, Mr. Catrino, you stated that you bought the truck for Mr. Rennaker in?

A. 1944, I imagine.

Q. 1944?

A. I think it was 1944, yes, the first one.

Q. You said something about he mortgaged his house to make a down payment on it, was that it?

A. No, what I meant, Jim was broke. I told him I help him out. He told me, "If you buy trucks, I will pay them in two months." After I make up my mind, I bought him a truck. He was renting house out there. He showed me the house and he says, [222] "Can you buy it for me?" I says, "What they want?" "Two hundred fifty dollars down and twenty-five a month down payment."

Court: You don't need to let him tell a long

(Testimony of Sam Catrino.)

story like this. You can bring it out by questions and answers.

Q. I think, Mr. Catrino, you stated he worked on you for about a week before you bought the truck, is that right?

A. After me for buy truck.

Q. For a week? A. Yes.

Q. He didn't have the money to buy the truck?

A. Yes.

Q. You bought the truck after he talked to you for a week? A. Yes.

Q. Your arrangement with him was he could pay you when he could?

A. I had to give him a chance to begin.

Q. As you said, all you were interested in was interest on your money? A. That's right.

Q. Now, when did Mr. Rennaker first tell you the story? A. What story?

Q. That he told to the jury here on March 13, 1946. A. He never told me no story.

Q. He never told you no story? [223]

A. No, sir.

Q. He told you the truth, did he?

A. That is what I figured, he would tell the truth. He was supposed to say the truth as far as I know.

Q. As far as you know? A. That's right.

Q. When did he first tell you that?

A. Before the trial.

Q. How long before the trial?

A. That day he told me, he says to me, he said

(Testimony of Sam Catrino.)

an Indian asked him for a quart of wine. I says, "You know all about it then." Then I says, "Tell the truth, that is all I want you to tell."

Q. He came to you and volunteered this information?

A. No, I says, "We got picked up the other day."

Q. Just a minute. This was right after you were arrested? A. Right after we was arrested.

Q. You went to him and told him you had been arrested?

A. I never went to him, he came down to the place.

Q. Down to the place?

A. Down to the place. I told him we got picked up for selling a quart of wine.

Q. When he came down to the place—I want to get the story straight if I can—when he came there, you went over and told him you got picked up for selling wine? [224]

A. He found out himself at the same time.

Q. He knew it when he came to your place?

A. Then he told me an Indian asked him for wine, and I asked him, "If you want to go witness," and he said, "You bet you."

Q. Did he describe the Indian to you?

A. No, sir.

Q. Didn't tell you what the Indian looked like?

A. No, sir.

Q. The Indian's name? A. No, sir.

Q. Didn't tell you who it was? A. No, sir.

(Testimony of Sam Catrino.)

Q. But he just said he knew him and he came up to Rennaker and tried to buy a quart of wine, is that right? A. That's right.

Q. Did you tell him who the Indian was you were supposed to have sold the liquor to?

A. No, sir, I didn't know myself.

Q. As long as he told you that story, you wanted him as a witness in Court. You had him for a witness?

A. I don't know at that time who was around, but if you want to go for witness that is all we want you for.

Q. That's all you wanted him for, is that right?

A. That's right. [225]

Q. You didn't ask him for a description of the Indian? A. No, sir.

Q. And he didn't give you the description of the Indian? A. No, sir.

Q. Did he tell you he was an Indian?

A. He said he was an Indian.

Q. How did you know he was the same Indian?

A. I never said it was the same Indian.

Q. You didn't know it would be the same Indian? A. No, sir.

Q. But you thought anybody who had seen an Indian in there buying wine would be a good witness in your case, is that right?

A. That is what he told me.

Q. You are the one that told him he would be a good witness.

A. No, sir, he said he would be a good witness.

(Testimony of Sam Catrino.)

Q. Did you think he would be a good witness?

A. He was a witness, wasn't he?

Q. Did you think he would be a good witness before he came into court?

A. I don't know whether he was going to be a good witness or not.

Q. You knew you were only charged with selling wine to one Indian, didn't you?

A. Yes. [226]

Q. What made you think he was talking about the same Indian?

A. I didn't say he was talking about the same Indian. It was the same Indian as far as I know.

Q. You didn't know whether it was the same Indian or not? A. No, sir.

Q. Lots of them come in from the Flathead Reservation? A. Sure.

Q. Lots of them come in, drop in your place once in awhile? A. All over town.

Q. Lots of them down in the vicinity where your place is? A. We got a sign in the door.

Q. Lots of them are outside?

A. I can speak Mexican myself. Mexicans—(interrupted)

Q. Indians don't speak Mexican for you, do they? A. Some Indians do.

Q. You are Italian? A. Italian.

Q. You don't have any trouble telling the difference between an Indian and a Mexican, do you?

A. I can tell sometime.

(Testimony of Sam Catrino.)

Q. Did you know when you came into Court on the morning of March 13, 1946, that Jim Rennaker was going to testify for you?

A. He was going to tell the truth, what he knew.

Q. He was going to be a witness in your defense, you knew that, didn't you? [227]

A. He wanted to be a witness for me, supposed to be a witness, anyhow.

Q. Did you know he was going to come in here and take an oath before the Clerk and testify in your defense? A. That's right.

Q. You knew that before you came into Court that morning, didn't you?

A. Of course we knew it.

Q. Of course, you did, but you didn't know whether Pierre and the Indian Rennaker was talking about were the same Indian, did you?

A. No, I don't.

Q. Now, Rennaker told you a story about an Indian right after you were arrested. Now, how many times did he tell you that story between the first time you heard it and the day you came to trial here on March 13, 1946?

A. He never tell me no story.

Q. I am not indicating to you it was a false story. He told you what you thought was the truth. How many times did he tell it to you?

A. He told me he was going to be witness.

Q. How many times did he tell it to you?

A. A couple of times.

(Testimony of Sam Catrino.)

Q. About twice between October 22 until March 13, 1946? A. Something like that. [228]

Q. About twice. Didn't he tell it to you on the morning of March 13, 1946, before you came up here to testify? A. Never told me anything.

Q. Never told you anything? A. No, sir.

Q. Down at the Brunswick Bar that morning?

A. I was by there.

Q. You weren't tending bar? A. No.

Q. You had a bartender hired?

A. That's right.

Q. As you heard John Reinhard say, everyone had a few drinks?

A. All drinking, I suppose.

Q. Whose liquor did they drink?

A. The Brunswick Bar's.

Q. You weren't charging your witnesses for the drinks, were you? A. No, sir.

Q. You didn't let the bartender charge those people for that liquor, did you?

A. Everyone pay for his own.

Q. Everyone paid for his own?

A. That's right.

Q. Just before you came up to Court with all your witnesses you had the bartender collect for each drink? [229]

A. One buy one, the other buy another one.

Q. The bartender rang up a charge for each drink? A. Yes, sir.

Q. Did you talk to Jim Rennaker that morning?

(Testimony of Sam Catrino.)

A. We was up there and Johnny come down and we all come together, that is all.

Q. Did you talk to Jim Rennaker at the Brunswick Bar that morning?

A. We did talk together.

Q. What did you talk about?

A. We talk about we were going to get up there to the Court.

Q. Get up to Court? A. That's right.

Q. So you could come up here and try the case. Did Jim Rennaker tell you what he was going to testify to when he came up in Court?

A. No, sir.

Q. He didn't tell you what he would say when he got here? A. No.

Q. Did you ask him? A. No, sir.

Q. Did you tell him what to say?

A. No, sir.

Q. What did you talk to Mr. Rennaker about that morning, Sam? [230]

A. I just say it is time we go up there to Court.

Q. That is all you said?

A. I was a little late myself when I get in there. I had the car, and we all come in the car.

Q. How many drinks did they have there that morning? A. I don't know.

Q. How many do you think they had?

A. I wasn't right there when they was drinking, I was kind of late.

Court: Ladies and gentlemen of the jury, can

(Testimony of Sam Catrino.)

you hear the witness and understand what he is saying? Very well.

Q. Now, Mr. Catrino, you said yesterday that you never gave Jim Rennaker a cent?

A. Yes.

Q. Since this case was filed against you?

A. Yes.

Q. Well, did you ever loan him any money?

A. Not since we had that trouble, not since I took the truck away.

Q. Not since you took the truck away?

A. No.

Q. That would be back in February, the last part, of 1947, the first truck was taken away, the next one the first part of May, 1947, is that about right? A. Yes. [231]

Q. You never did give him anything since that time? A. Yes.

Q. Is that right? A. Yes.

Q. Did you ever loan him any money since that time? A. No.

Q. Did you ever give Mrs. Rennaker any money? A. No, sir.

Q. Never any money to Mrs. Catrino since that time? A. No, sir.

Mr. Angland: At this time, your Honor, I wish this witness excused for further cross-examination, but I would like to have leave to recall the witness for further cross-examination later today, possibly this morning after we have a morning recess.

(Testimony of Sam Catrino.)

Court: Very well, you may proceed with re-direct.

Mr. Taylor: I don't think there is any re-direct.

Court: Very well, the witness is excused from the stand.

(Witness excused.)

LESTER LaVALLEY,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Higgins: [232]

Q. State your name, please?

A. Lester LaValley.

Q. Where do you reside, Lester?

A. Missoula.

Q. How long have you lived here?

A. Since 1940, eight years.

Q. How old are you now?

A. Twenty-two.

Q. Where are you employed at the present time? A. Jack Dougherty.

Q. Do you recall toward the latter part of 1945 of making a trip down to Plains or in that vicinity with John Reinhard? A. Yes.

Q. Do you recall about when that was?

A. No, it was in November, I think.

Q. In November that year?

A. Yes, I think.

(Testimony of Lester LaValley.)

Q. What time of day did you leave Missoula?

A. In the afternoon about four o'clock.

Q. Who were with you?

A. Jack Reinhard.

Q. Just the two of you? A. Yes.

Q. Where did you go?

A. We went to Plains, Montana. [233]

Q. And in the vicinity of Plains, did you meet a party by the name—an Indian by the name of Old Horn, who testified here yesterday?

A. Yes.

Q. Did you hear his testimony? A. Yes.

Q. Tell the Court and jury where you met Mr. Old Horn? A. Met him at Dog Lake.

Q. Is that near Hot Springs?

A. Yes, I believe it is.

Q. Did you inquire from him, or did Reinhard inquire from him as to where Pat Pierre was?

A. Reinhard.

Q. Did Old Horn tell him? A. Yes.

Q. Did he say where he was?

A. No, he said he was in Plains. He never told him exactly where he was.

Q. What did you do then?

A. Went to Plains.

Q. In your car or Old Horn's?

A. Johnny's car.

Q. Old Horn went with you? A. Yes.

Q. You started back toward Plains? [234]

A. Yes.

(Testimony of Lester LaValley.)

Q. Did you meet Pierre along the road?

A. Yes.

Q. Did he get in your car, or did you folks get in the car he was in?

A. He got in the car we was in.

Q. What would you say as to whether or not he had been drinking at the time?

A. I believe he was drinking.

Q. Still able to get around? A. Yes.

Q. Were you present there when John Reinhard had any conversation with Pierre? A. Yes.

Q. Did you, at that time, that day, Lester, at that place, or any other place, hear John Reinhard make any offer to Pierre concerning testimony that he would give in the liquor case that was coming up? A. No.

Q. Did Reinhard at any time that day say anything to Pierre about one hundred dollars?

A. No.

Q. Did he say anything to Pierre about coming into court here and testifying to some facts that weren't true facts? A. No. [235]

Q. Did you ride back to Missoula with him?

A. Yes.

Q. Did Old Horn come along too?

A. Yes.

Q. Was he intoxicated? A. Yes.

Q. How about Pierre, would you say that he was intoxicated?

(Testimony of Lester LaValley.)

A. No, I wouldn't say he was intoxicated, but he had been drinking.

Q. During all of the time that Reinhard was in the presence of Pierre, were you also there?

A. Yes.

Q. Was there at any time on that day or the next day or the day before, or any time you were there anything said by Reinhard to Pierre about coming into Court and testifying falsely to any facts? A. No.

Mr. Higgins: You may cross-examine.

Cross Examination

By Mr. Angland:

Q. Mr. LaValley, were you invited by Reinhard to go to Plains, Montana, that day? A. Yes.

Q. Did anybody else ask you to go?

A. No. [236]

Q. Where did you meet Mr. Reinhard that day?

A. The Brunswick Bar.

Q. Here in Missoula? A. Yes.

Q. Did he tell you what the purpose of his trip was? A. No.

Q. Mr. Reinhard didn't tell you what the purpose of the trip was at all? A. No.

Q. Just asked you to get in the car?

A. Yes.

Q. You didn't know where you were going or why?

A. I knew where we were going. We were going to Arlee.

(Testimony of Lester LaValley.)

Q. Arlee? A. Yes.

Q. What were you going to Arlee for?

A. We was going—I thought I knew Pierre, but when we got talking to him, we found out it was the wrong one.

Q. He did tell you what he was going to Arlee for? A. Yes.

Q. I thought you said a minute ago he didn't tell you why you were taking the trip.

A. He didn't right at first when he first asked me to go riding with him.

Q. Maybe I didn't make myself clear. He didn't tell you when you sat down in the front seat of the car? A. No. [237]

Q. When you sat down, he did tell you?

A. We was just riding around town and he asked me about Pierre and I told him I knew Pierre at Arlee.

Q. You were talking about the case that had been filed against Catrino and Reinhard?

A. Yes.

Q. And the fact that Pierre was the Indian involved in that alleged violation of law?

A. Yes.

Q. So you were going to help him out in locating Pat Pierre? A. Yes.

Q. Did he tell you why he wanted to see Pat Pierre? A. No, he didn't.

Q. You knew, didn't you, that Pat Pierre was the fellow that would have to testify for the gov-

(Testimony of Lester LaValley.)

erment in a charge of that kind, didn't you?

A. Yes.

Q. You knew Pat Pierre would be a government witness, didn't you? A. Yes.

Q. You went along to assist Mr. Reinhard?

A. Yes.

Q. What assistance were you going to give?

A. I don't know what you mean.

Q. How were you going to help him out? You went along to help?

A. I was just going to help him locate him.

Q. Why did he want to locate Pierre?

Mr. Higgins: Objected to as not a proper question to put to this witness.

Court: I don't know. Overrule the objection.

Q. Did he tell you why he wanted to see Pierre?

A. No.

Q. Didn't he tell you what he wanted to talk to Pierre about? A. No.

Q. You just knew it was about this case, and that is all? A. Yes.

Q. Did he ask you to go with him so that you would be able to tell what Pierre said?

A. No.

Q. Well, you started from Missoula for Arlee, Montana? A. Yes.

Q. To find the Pierre you knew? A. Yes.

Q. You went through Plains on the way, didn't you? A. To Arlee, no.

Q. How far is Plains?

(Testimony of Lester LaValley.)

A. It is about 70 miles. [239]

Q. Arlee is only about 40 miles, isn't it?

A. Yes.

Q. So, when you got to Arlee, you changed your plans and decided to go on up to Plains?

A. Yes.

Q. When you finally found Pierre, did you get out of the car with John Reinhard?

A. No.

Q. He said that he got out of the car and went over and talked to Pierre. When he talked to him, did you get out of the car and go with him?

A. No.

Q. You didn't then—when you said John Reinhard never made an offer of \$100 to Pierre, as a matter of fact, you don't know what he might have said when you weren't there, do you?

A. They were right behind the car and I could hear them talking.

Q. What did they say?

A. John Reinhard introduced himself to Pierre and told him he would like to talk to him and they got in the car.

Q. That is all he said? A. Yes.

Q. Did he tell Pierre where he worked and why he wanted to talk?

A. Yes, he told him where he worked and he wanted to find out how that happened. [240]

Q. What happened?

(Testimony of Lester LaValley.)

A. How "I happened to sell the quart of wine to you."

Q. He asked Pierre, "How did it happen I sold you a quart of wine?" A. Yes.

Q. You heard Reinhard say that to Pierre?

A. Yes.

Q. Did you hear him say anything else to Pierre?

A. Not that I can remember now.

Q. Did they get in the car immediately then?

A. Yes.

Q. And did they talk about how it happened?

A. Yes.

Q. Who did the talking?

A. Johnny asked him how it happened and he said he just went up to him and talked Mexican that he wanted a quart of wine. I don't remember how he said it, but he did say it that night. Johnny gave him the quart of wine and he walked out and got picked up.

Q. That is what Pierre said to Reinhard?

A. Yes.

Q. What did Reinhard say to Pierre?

A. Reinhard just asked what happened and that is what Pierre told him. He asked how it happened he sold him a quart of wine. [241]

Q. That is all Reinhard said and Pierre asked him—Pierre told him the story and quit talking. Didn't they have any more conversation?

A. Not about that.

(Testimony of Lester LaValley.)

Q. What did they talk about after that?

A. Pierre talked about wanting a ride to Missoula, so they come to Missoula.

Q. You weren't in the Brunswick Bar on the evening of October 20, 1945, were you?

A. No.

Q. So when you stated that you never heard John Reinhard tell Pierre—you never heard John Reinhard say anything to Pierre about telling a false story in Court, you didn't know whether the story would be false or true? A. No.

Q. You didn't know whether John Reinhard and Pierre were talking about a true story or a false story, did you? A. No.

Q. Because you weren't there on October 20th?

A. No.

Q. How many times did John Reinhard ask Pierre to repeat that story?

A. Just once, I think, I believe.

Q. How many hours were you together? [242]

A. About two or three hours, I would say.

Q. What time did you first meet Pierre?

A. I believe it was about ten o'clock, nine or ten o'clock.

Q. Nine or ten o'clock? A. Yes.

Q. When did you arrive back in Missoula?

A. About twelve-thirty or one.

Q. How long did Pierre and Old Horn stay with you after you got to Missoula?

(Testimony of Lester LaValley.)

A. Just as quick as we got to Missoula, I went home.

Q. You left immediately? A. Yes.

Q. Did you say anything to Pierre about the story at all, about what occurred that night?

A. No.

Q. Did you say anything to Old Horn about it?

A. No.

Q. You never heard any money mentioned?

A. No.

Q. Have you ever talked to either Pat Pierre or Fred Old Horn since this case appeared?

A. No.

Q. Since that visit? A. No.

Q. That was the visit, you said, in November, 1945? A. Yes. [243]

Q. About that time? A. Yes.

Q. It could have been the first of December, somewhere along in there? A. Yes.

Q. Did you ever work for Mr. Catrino?

A. No, I never did.

Q. You hang around there, Catrino, around the Brunswick Bar? A. Yes.

Q. You make that somewhat of a headquarters when you are in Missoula? A. Yes.

Mr. Angland: That is all.

Re-Direct Examination

By Mr. Higgins:

Q. Mr. LaValley, when John and Mr. Pierre were talking, did Pierre say to John that, "I fooled you"? A. Yes, I believe he did.

(Testimony of Lester LaValley.)

Q. And did he use the expression that, "I told you I wanted vino Petillio"? A. Yes.

Mr. Pease: Just a minute, objected to as obviously leading, your Honor, he is just testifying himself instead of asking the witness. [244]

Court. It is leading, all right, as counsel knows.

Mr. Higgins: Yes, your Honor.

Q. What, if anything, was said by Pierre to Reinhard about getting the wine?

A. Well, he just said it in Mexican, and I knew them, but I can't remember now what he said. He told him in Mexican that he wanted a quart of wine.

Q. Did he say anything else as to how he procured it?

A. He made a motion. He says Johnny thought he wanted a glass and he says no, he wanted a bottle.

Q. Did Pierre and Long Horn ask to come into Missoula with you, ride in? A. Yes.

Mr. Higgins: That is all.

Mr. Angland: Nothing further.

(Witness excused.)

PAUL WILCOX,

called as a witness on behalf of the defendants,
being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. You may state your name to the Court and
jury. A. Paul D. Wilcox.

Q. Where do you live? [245] A. Missoula.

Q. How long have you lived in Missoula, in the
vicinity of Missoula? A. Since 1919.

Q. What is your occupation?

A. I am the present day constable in the court
of Judge Ralph L. Starr.

Q. Have you had any other official positions in
Missoula? A. Yes, sir.

Q. What position?

A. Deputy Sheriff for four years under Charles
E. Sharp, and Chief of Police of Missoula for two
years.

Q. I will ask you, Mr. Wilcox, if you are ac-
quainted with Mr. James Rennaker?

A. I am.

Q. How long have you known him?

A. I couldn't just exactly say the exact date.

Q. Just approximately.

A. It has been the last three or four years, I
think, the first acquaintance I had with the man.

Mr. Angland: Just a minute, you answered. We
will object to any volunteer testimony, your Honor.

Court: All right, proceed. Propound questions.

Q. I will ask you, Mr. Wilcox, if you know his

(Testimony of Paul Wilcox.)

reputation for truth and veracity in this vicinity?

Mr. Angland: To which we object, your Honor, the reputation of Mr. Rennaker for truth and veracity is not in issue in this case.

Court: Is it in issue?

Mr. Angland: The matter has been litigated, I think, your Honor.

Court: It is litigated and adjudicated, what more do you want?

Mr. Taylor: I think in perjury and subornation of perjury that the Court——(interrupted)

Court: There aren't any distinctions much between subornation and perjury.

Mr. Taylor: I know there is a distinction.

Court: It is a very slight one.

Mr. Taylor: Very slight, but we have holdings of Courts where it was directly authorized that matter might be stated as to the matter of the reputation of the witness.

Court: Although it has been adjudicated, you want to add to the adjudication, is that it?

Mr. Taylor: No, all I want to do is present to the Court testimony disclosing the reliability that could be placed upon the person who has testified and is the arch witness upon which they predicate this charge.

Mr. Angland: They have the records of this Court.

Mr. Taylor: I understand that, but the Courts have repeatedly held——(interrupted) [247]

(Testimony of Paul Wilcox.)

Court: If you want to add to the adjudication I have mentioned, you will do it very briefly. I'll not let you call four or five witnesses on it.

Mr. Taylor: I would be rather brief if we may offer proof.

Court: Go ahead.

Q. Do you know his reputation in this community in which you live for truth and veracity?

A. I do.

Q. Is it good or bad? A. Bad.

Mr. Taylor: That is all. You may examine.

Mr. Pease: No cross-examination.

(Witness excused.)

GARY McCLUNG,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Higgins:

Q. State your name, please.

A. Gary McClung.

Q. Where do you reside? A. Missoula.

Q. How long have you lived here?

A. Off and on since 1933.

Q. Are you acquainted with James Rennaker?

A. Yes.

Q. How long have you known him?

A. Since 1944.

Q. What is his reputation in this community for truth and veracity? A. Bad.

Mr. Higgins: You may examine.

(Testimony of Gary McClung.)

Cross-Examination

By Mr. Pease:

Q. What is your occupation?

A. Livestock trucking.

Mr. Pease: That is all.

Re-Direct Examination

By Mr. Higgins:

Q. Mr. Rennaker formerly worked for you, didn't he?

Mr. Pease: Just a moment. I object to that as improper redirect examination.

Court: Yes, sustain the objection.

Mr. Higgins: That is all.

(Witness excused.) [249]

J. W. HAY

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. You may state your name to the Court and jury. A. J. W. Hay.

Q. Where do you live, Mr. Hay?

A. Missoula.

Q. How long have you lived in Missoula?

A. Thirteen or fourteen years.

Q. What is your occupation?

A. Truck driver.

Q. I will ask you if you are acquainted with James Rennaker? A. I am.

(Testimony of J. W. Hay.)

Q. Do you know his reputation for truth and veracity?

Mr. Angland: Just a moment, Mr. Hay. We will again object to this evidence, your Honor, as the matter has already been adjudicated in this Court, and in line with what the Court said, this is the third witness called for the same purpose.

Court: I will let in testimony to add to it. I don't see where he gains anything after all, but we will let him go ahead with it. This is the last one, though. I am not going to let you go into it any further.

A. All I know is what I heard them say in Benny Martelli's. [250]

Q. If you can, if you know, what is his reputation for truth and veracity in this vicinity, that is, what people think? A. I would say bad.

Cross-Examination

By Mr. Pease:

Q. Who did you discuss his reputation with?

A. Different people.

Q. Who, name one? Name a person you discussed his reputation with before you came into the courtroom here?

A. Benny Martelli, Sam Catrino—(interrupted)

Mr. Pease: Sam Catrino. That's all.

Mr. Higgins: You asked for the names of persons. If there were others, he can say so.

(Testimony of J. W. Hay.)

Re-Direct Examination

By Mr. Taylor:

Q. You have answered his reputation for truth and veracity is bad. You have stated you have heard other people say it was. Do you restrict that to the one person you named who you talked to about it?

A. I have heard different people talk about that.

Q. Recently or over a period of time?

A. I would say over a period of time.

Q. You were formerly in the stock business, were you not, a stock raiser?

A. I was before I moved to Missoula. [251]

Q. In Ravalli County? A. Yes.

Q. Did you know Mr. Rennaker there?

A. Yes.

Re-Cross Examination

By Mr. Pease:

Q. Are you a friend of Sam Catrino's?

A. Yes.

Q. A business associate of his?

A. I am like anybody else, yes.

Q. A business associate of his? A. No.

Q. Have you been in the past a business associate of his? A. No.

Q. Did he ask you to come and testify?

A. He sent me a subpoena to come.

Mr. Pease: That is all.

Mr. Taylor: That is all.

(Witness excused.)

TOM MANGIN,

called as a witness on behalf of the defendants, being first duly sworn testified as follows:

Direct Examination.

By Mr. Higgins: [252]

Q. State your name, please.

A. Thomas A. Mangin.

Q. Where do you reside? A. 404 Alder.

Q. How long have you lived in Missoula?

A. Since 1918.

Q. Are you acquainted with Sam Catrino?

A. Yes.

Q. How long have you known him?

A. I have been his neighbor for eight years, just a fence between us.

Q. How long have you known him in addition to that, Tom?

A. Well, I have known him since 1928.

Q. Have you known him rather intimately?

A. No.

Q. You have lived neighbors to him for some time? A. Just neighbors.

Q. Do you know his reputation in this community for truth and veracity?

A. All I know about Sam—(interrupted)

Mr. Pease: Just a minute, the question calls for a yes or no answer.

Court: Yes, that's right.

Q. Do you know his reputation in this community for truth and veracity? [253]

(Testimony of Tom Mangin.)

A. I do.

Q. What is it, good or bad?

A. As far as I know, he is one of the best neighbors I ever had.

Mr. Pease: Just answer the question, please, witness.

Cross Examination.

By Mr. Pease:

Q. Are you a business neighbor of his? Does your business adjoin his business? A. No.

Q. Do you have any business interests in that end of town? A. Yes, I have.

Q. Does the good reputation of Mr. Catrino extend to the Brunswick Bar and the Brunswick Hotel, which he owns?

A. I can't tell you anything about his business.

Q. You have no opinion on that?

A. I don't know anything about his business. The only thing I know, he is my neighbor, a wonderful neighbor, and his family.

Q. You don't know what the reputation of the saloon and the second floor above it is then, generally, in the City of Missoula?

A. No, I don't. The actual truth is I don't, because I don't know anything about anybody's business other than my own.

Q. You never heard a rumor that there was—
(interrupted) [254]

Mr. Higgins: Just a moment—(interrupted)

Q. What is your business?

(Testimony of Tom Mangin.)

A. I run Mangin's Chicken Inn and Double Front Bar on Railroad Avenue.

Q. Railroad Avenue?

A. Next to the Park Hotel.

Q. Catrino runs another saloon in the same vicinity?

A. Practically, about three blocks away.

Mr. Pease: That is all.

Mr. Taylor: That's all.

(Witness Excused)

ROY F. WORDEN,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Higgins:

Q. State your name, please.

A. Roy F. Worden.

Q. Where do you reside, Mr. Worden?

A. 215 East Spruce Street.

Q. How long have you lived in Missoula?

A. Since 1899.

Q. 1899? A. That's right. [255]

Q. What business are you engaged in?

A. I run a super-market grocery business.

Q. Are you acquainted with Sam Catrino?

A. Yes.

Q. How long have you known him?

A. I think about 1930.

(Testimony of Roy F. Worden.)

Q. Do you know his reputation in this community for truth and veracity?

A. As far as my dealings with him, he has been honorable.

Q. Would you say he enjoyed a good reputation in this community?

Mr. Pease: That is objected to as a leading question and improper foundation.

Court: Yes, that has already been answered.

Mr. Higgins: That is all.

Cross Examination.

By Mr. Pease:

Q. All that you have to say, Mr. Worden, is that he pays his bills at your store?

A. He has never owed me any and I have never owed him any.

Q. You have nothing to say about the reputation of his business or the manner in which he makes his living at his place of business on Woody Street?

A. I don't know anything about that.

Q. You don't know anything about the reputation of that place [256] either, I suppose?

A. I wouldn't say.

Mr. Pease: That is all.

(Witness Excused)

JOHN W. LOWELL,

called as a witness on behalf of the defendants,
being first duly sworn, testified as follows:

Direct Examination.

By Mr. Higgins:

Q. State your name, please.

A. John W. Lowell.

Q. Where do you reside, Mr. Lowell?

A. 2217 Hilda.

Q. In the City of Missoula?

A. That is outside the city limits.

Q. You are retired from the United States Forest Service? A. Yes.

Q. You were formerly the Forest Service Supervisor at Hamilton? A. Yes.

Q. Do you know Sam Catrino? A. I do.

Q. How long have you known him?

A. About 12 years. [257]

Q. Do you know his reputation in this community for truth and veracity?

A. I never have heard any comments by other people about it.

Mr. England: Just a minute, we object to any further answers. He has never heard any comment, that is the answer to your question, your Honor.

Court: Yes, I believe it ends with that answer. Anything further?

Mr. Higgins: That is all.

Court: Any cross examination?

Mr. England: No cross examination.

(Witness Excused)

J. B. HAVILAND,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Higgins:

Q. State your name, please.

A. J. B. Haviland.

Q. Where do you reside?

A. 242 East Beckwith.

Q. How long have you lived in Missoula?

A. Sixty years yesterday.

Q. Sixty years yesterday? [258]

A. Yes.

Q. Are you acquainted with John Reinhard?

A. Yes.

Q. He worked for you about how many years?

A. About 20 years.

Q. Do you know his reputation in this community for truth and veracity?

A. Very good.

Mr. Higgins: You may cross examine.

Cross Examination.

By Mr. Pease:

Q. What is your occupation?

A. Contractor.

Q. Have you had business relations with Sam Catrino? A. No.

Q. Do you patronize his place of business?

A. Never was in it.

Q. Has his place of business a good reputation?

(Testimony of J. B. Haviland.)

Mr. Higgins: We are not now dealing with the reputation of the Brunswick Bar.

Mr. Pease: I am on cross examination.

Mr. Higgins: It isn't proper cross examination.

Mr. Pease: You were asking about Reinhard. I will withdraw that.

Q. With whom have you discussed John Reinhard's reputation? [259]

A. Nobody, he worked for me for 20 years.

Q. Have you discussed his reputation with anybody? A. Certainly not.

Q. All you are telling here is based on some personal opinion, is that it?

A. If you have a man around twenty years, you ought to know him.

Mr. Pease: I move to strike all evidence of the witness on the ground it isn't reputation at all.

Court: Reputation, you know, is what people talk about, say about another. All you know about him is that he worked for you for 20 years?

Witness: Yes, and I never heard anybody say a word against him.

Mr. Pease: No further cross examination.

(Witness Excused)

A. E. RYNERDSON,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. You may state your name to the jury.

A. A. E. Rynerdson, Hot Springs, Montana.

Q. Camas? [260]

A. Hot Springs.

Q. How long have you lived in that vicinity?

A. I came there in 1928.

Q. 1928, that would be 20 years. Are you acquainted with Pat Pierre? A. Yes, sir.

Q. How long have you known him?

A. A good many years, since he was a little boy.

Q. Do you know his reputation in that community for truth and veracity? A. Yes, sir.

Q. Is it good or bad? A. Bad.

Mr. Taylor: You may examine.

Mr. Pease: No cross examination.

(Witness Excused)

WARD WINEBRENNER,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Where do you live, Mr. Winebrenner?

A. Hot Springs, Montana.

Q. Is that what we call Camas Hot Springs?

A. Camas is right close to it, about a mile.

(Testimony of Ward Winebrenner.)

Q. How long have you lived there?

A. I come there September 10, 1939.

Q. What is your business?

A. Saw mill work and deputy sheriff.

Q. I will ask you if you are acquainted with Pat Pierre?

A. Truthfully I don't believe I am.

Q. I beg your pardon.

A. Truthfully, I don't think I am with Pat Pierre. I know one of his brothers, but I don't think I know him.

Q. Do you know of him?

A. Well, not in particular, I don't believe I do.

Mr. Taylor: That is all.

(Witness Excused)

Mr. Higgins: Your Honor, I wonder if we could have a few minutes recess and I think we will expedite the conclusion of our witnesses.

Court: Very well, we will take about 15 minutes.

(Whereupon, at 11:05 a.m. July 9, 1948, a 15 minute recess was taken.)

Court: Gentlemen, are you ready to proceed?

Mr. Taylor: We will rest, if the Court please.

Court: Any rebuttal, gentlemen?

Mr. Pease: If your Honor please, we have no rebuttal. In view of the fact we can undoubtedly finish the case today, we [262] would like an opportunity to prepare some requested instructions for your Honor's consideration, and present them at 1:30 or 2 o'clock this afternoon. I have been

interrupted a dozen times in attempting to get these instructions prepared.

Court: Of course, counsel on both sides know instructions shouldn't be given to the Court at the last minute. Thus far, I haven't had requested instructions from either side, so I have had to prepare some myself. I don't know whether you have prepared some.

Mr. Higgins: We have prepared some.

Court: How many?

Mr. Higgins: Eighteen or twenty.

Court: You can't hand them to me at the last minute, you better cut them down.

Mr. Higgins: Most of these, your Honor, are on reasonable doubt.

Court: All right, I'll look at them and see if you have any special instructions. I'll look at them and see if I'll give them. That will go for counsel on the other side. I didn't know anything about it, not having heard anything about it. How long do you want to argue the case?

Mr. Pease: I would say for the two of us an hour.

Court: Are you both going to argue for the defense?

Mr. Taylor: I think an hour on a side.

Court: Very well, I think we ought to figure on an hour [263] to a side. That should be sufficient.

Mr. Higgins: Your Honor, before the jury is excused, I wonder if I might be permitted to file

a second motion for judgment of acquittal?

Court: Is it on the same grounds?

Mr. Higgins: Yes, your Honor.

[Title of Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

Come Now the Defendants and move the Court to order the entry of a judgment of acquittal upon the following grounds:

1. That the evidence is insufficient to maintain a conviction under Count Number One of the Indictment against the Defendants, Sam Catrino and John A. Reinhard, or either.
2. That the evidence is insufficient to maintain a conviction under Count Number Two of the Indictment against the Defendants, Sam Catrino and John A. Reinhard, or either.
3. That the evidence is insufficient to maintain a conviction under Count Number Three of the Indictment against the Defendant, John A. Reinhard.

J. D. TAYLOR,
GEORGE F. HIGGINS,
Attorneys for Defendants.

Court: I will overrule the motion.

Mr. Higgins: May we have an exception?

Court: Certainly. The Court will stand in recess [264] until two o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m., July 9, 1948, at which time the following proceedings were had.)

Court: Are you gentlemen ready to proceed with your argument?

Mr. Pease: Yes, your Honor.

Mr. Pease made the opening argument on behalf of the government.

Mr. Higgins and Mr. Taylor each argued the case on behalf of the defendants.

Mr. Angland made the closing argument on behalf of the government.

(Whereupon, at 4:05 p.m. a 15 minute recess was taken.)

Court: Ladies and gentlemen of the jury, you have heard about two hours discussion of the facts by counsel on both sides of the case, for the government and for the defendants, after having heard the evidence in the case as presented to you by the witnesses, and at this stage of the proceedings, it becomes the duty of the Court to advise you as to the rules of law that the Court deems applicable to a state of facts such as we have heard here in this case and under the charge presented by this indictment.

In the first place, the Court advises the jury that they are the sole judges of the facts. The Court judges the rules of [265] law that shall be given the jury in order that they, perhaps, may more readily reach a conclusion or verdict in the case. Now, these rules—or the Court endeavors to make them as free from legal verbiage or legal phraseology as possible so that they will be easily understood and can be as easily applied.

Now, you judge the facts in the case, the credibility of witnesses, the weight to be given the testimony, and the weight to be given circumstances that always follow in the wake of verbal testimony, and that sometimes is quite important and helps explain the verbal testimony that you have heard from the stand, or at any rate, may throw some light upon it.

Now, in this case, these defendants have been charged by an indictment found by the Grand Jury with subornation of perjury and with obstruction of justice and with attempting to influence a witness. These are all set out in three counts, Count No. 1, subornation, Count No. 2, Obstruction of Justice, Count 3, attempting to influence a witness. Now, it has been some time since the contents of this indictment was brought to your attention by the District Attorney, and I feel that perhaps I should read these counts over to you again, so that the further instructions that I expect to give—well, that the charges, at any rate, will be more clearly and recently in your mind as other instructions are given to you.

"Count One, Subornation of Perjury, Title 18, 232. The above named defendants, Sam Catrino, and John A. Reinhard, on [266] or about March 13, 1946, at Missoula, in the District of Montana, and within the jurisdiction of this court, did unlawfully, corruptly and feloniously, procure one James B. Rennaker to commit perjury as follows: The said defendants, Sam Catrino and John A. Reinhard,

were charged in the District Court of the United States for the District of Montana, with a crime against the sovereignty of the United States, to-wit, violation of Section 241 of Title 24, U.S.C.A., viz., an unlawful sale of liquor to an Indian ward of the government, alleged to have been committed on October 20, 1945, at a saloon known as the Brunswick Bar in Missoula, Montana; said cause came on for trial on March 13, 1946; on and prior to said date, the said defendants, Sam Catrino and John A. Reinhard, solicited, procured and caused the said James Rennaker to appear as a witness in the said United States District Court on March 13, 1946, upon the trial of said cause and to be by the Clerk of said Court sworn as a witness in said cause and to testify that he, the said James B. Rennaker, on the late evening of October 20, 1945, was in the said Brunswick Bar and there saw a Mexican person buy a quantity of wine at the bar of said saloon, and deliver the same to one Pat A. Pierre; that said testimony so given was false and known by the defendants Sam Catrino and John A. Reinhard, and by the said James B. Rennaker, to be false; that in truth and in fact, said James B. Rennaker was not in said place, nor in the City of Missoula at the time [267] referred to, to-wit, the late evening of October 20, 1945, but was in or near the City of Butte, Montana, and that in truth and in fact, he did not see any person sell any wine or other liquor to the Indian ward, Pat A. Pierre, on October 20, 1945."

That is Count 1 of the indictment, and that count is based upon the statute referred to, which reads as follows:

"Section 232 of the United States Codes Annotated, Title 18, Subornation of Perjury. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in Section 231 of this title prescribed."

Now, Section 231 of the same title is as follows:

"Whoever, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000 and imprisoned not more than five years."

That is the statute upon which Count 1 is based.

Now, Count 2 is obstruction of justice. That is Title 18, Section 241.

"The above-named defendants, Sam Catrino and John A. Reinhard, on or about March 13, 1946, at Missoula, Montana, in [268] the District of Montana and within the jurisdiction of this Court, did unlawfully, corruptly and feloniously influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the District Court of the United States for the

District of Montana, then in session and engaged in the trial of a cause entitled, 'United States of America, vs. Sam Catrino and John A. Reinhard,' wherein said defendants were charged with and being tried for a violation of section 241 of Title 25 of the United States Code, to-wit: An unlawful sale of intoxicating liquor to Pat A. Pierre, an Indian ward of the United States; particularly in this, that said defendants did corruptly cause one James B. Rennaker to attend said trial and be sworn and testify as a witness for the said defendants to certain false statements, which said Rennaker and said Catrino and Reinhard knew to be false, to-wit, testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1945, and there saw an un-named Mexican purchase a quantity of wine at the bar and deliver it to an Indian ward named Pat A. Pierre."

The statute upon which that is based is number 241, title 18:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, shall endeavor to influence, intimidate or impede any party or witness, in any court [269] of the United States or before any United States commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or officer acting as such

commissioner, or who shall injure any party or witness in his person or property on account of his attending or having attended such court or examination before such commissioner or officer, or on account of his testifying or having testified to any matter pending therein, or who shall injure any such grand or petit juror in his person or property on account of any verdict, presentment, or indictment assented to by him, or on account of his being or having been such juror, or who shall injure any such commissioner or officer in his person or property on account of the performance of his official duties, or who corruptly or by threats of force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct or impede, the due administration of justice therein, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

You see, ladies and gentlemen, that that is quite an involved statute and contains several separate and distinct offenses, and two of the offenses there contained are set forth here in count number 2, obstruction of justice, and also the [270] offense of attempting to influence a witness also appears in that same section, and that is set forth in count 3 of the indictment and reads as follows:

"The above named defendants, John A. Reinhard, and John Doe, whose true name is unknown," --his name was afterwards found to be Lester LaValley, and the case was dismissed against him, as you will recall—"described"—he is described in

weight about 145 pounds and was wearing a big cowboy hat and range clothing at the time mentioned—that is a description of the person himself, and the defendant being unknown to the Grand Jury, they set forth a description of him, but it afterwards appeared that his name was Lester La-Valley, and he was set forth as a defendant, and the case was dismissed as to him—“on or about October 20, 1945, in Sanders County, Montana, in the District of Montana and within the jurisdiction of this court, did unlawfully, corruptly and feloniously endeavor to influence one Pat A. Pierre, a witness in a cause entitled, ‘United States of America vs. Sam Catrino and John A. Reinhard,’ then pending in the United States District Court for the for the District of Montana, in which said Catrino and Reinhard were charged with unlawfully selling a quantity of wine to said Pat A. Pierre, an Indian ward of the United States, in that said defendants corruptly offered said Pat A. Pierre a sum of money as a bribe to procure him to testify that a bottle of wine, which was in fact sold to said Pierre by said defendant John [271] A. Reinhard, was sold to said Pierre by a Mexican, and stated to said Pierre that they would back him up in said false testimony.”

That count, as you will recall, now stands only against the defendant John A. Reinhard.

Now, ladies and gentlemen, what I have read to you constitutes the indictment in this case found by the Federal Grand Jury, and this is not to be

considered by you as any evidence whatsoever against these defendants or either of them. It is simply the written form used for the purpose of enlightening all of us who are interested here, such as the jurors, judge, the defendants and their counsel, of the nature of the offense with which these defendants are charged.

This indictment consists of three counts. The jury have the power and authority to find the defendants guilty, one or both of them, of one or more of all of the counts set forth in this indictment. They have the power and authority to find the defendants, one or both of them, not guilty of one or more or all of the counts set forth in this indictment. It all depends upon how the jury, after a careful consideration and discussion of the evidence, shall resolve the evidence, just how they find it to be.

Now, these defendants have entered a plea, as you know, of not guilty to all of the counts in this indictment. Under that plea and at the beginning of the trial arises what in law [272] we term the presumption of innocence, which means that the defendants, and both of them, are presumed to be innocent until they are proven guilty beyond a reasonable doubt, as the Court will hereafter define a reasonable doubt to you.

Now, you ladies and gentlemen were selected here to serve on this jury after a very searching examination by counsel on both sides, and as I recall, the exercise of all challenges that counsel were

entitled to. They evidently concluded that you were fair minded, that you knew nothing about the facts of the case, that you were not connected with the defendants or related to them in any way, or any of them, or that there was any information you had that should be disclosed and that might show any disqualification. The examination disclosed you had no bias or prejudice against these defendants, or either of them. Your minds were free and open, unbiased, unprejudiced, to receive the testimony and consider it, and after that was over, to retire to your jury room and discuss it carefully and honestly and conscientiously, bearing in mind all the while the presumption of innocence, which follows the defendants throughout the trial of the case and to the jury room, where you will then determine whether, notwithstanding this presumption of innocence with which the law clothes the defendants, the defendants, or either of them, have actually been proven guilty beyond a reasonable doubt.

Now, you have often heard of reasonable doubt. Some of [273] you may have served on juries and you may have heard some long-winded definition given, such as I have years ago in the state courts, of what constitutes a reasonable doubt. It is a very simple matter, and a very simple definition will do, shorn of all that legal phraseology that used to be couched in that definition. The very words themselves explain to your minds what a reasonable doubt is, a doubt for which you can find a reason,

a good reason, a substantial reason, based upon the evidence or the lack of evidence or the character of the evidence. Now, after you have considered all of the evidence in the case, that which is favorable as well as that which is unfavorable, you feel that you have an abiding conviction to a moral certainty of the truth of the charge, then you are said to have no reasonable doubt, and it would be your duty to convict the defendants, one or both of them. And, again, after so considering all the evidence in the case, that which is favorable as well as that which is unfavorable, you feel that you have not an abiding conviction to a moral certainty of the truth of the charge, then it would equally be your duty to acquit the defendants, one or both of them.

You understand, ladies and gentlemen, the effect and force of the words used in that definition, "an abiding conviction to a moral certainty." Suppose we put it another way: a continuing belief to a very high degree of probability, a continuing belief to a very high degree of probability. Now, [274] that will give you the meaning and the application here of the other words I used in that definition.

As you know, it is impossible to make proof to a mathematical certainty, and that is never required under the law in these cases, because it could not be done. No such proof as might be made in mathematics and the sciences governs here in this case or in this Court under these circumstances.

As I said to you at the beginning, you are the

sole judges of the facts in this case. You judge the credibility of the witnesses, the weight to be given the testimony, and the weight to be given such circumstances as may accompany some of the verbal statements made by the witnesses upon the stand. You have an opportunity to see the witnesses before you here when sworn. Note his manner and demeanor as he appears upon the stand. Note whether he is frank and candid and outspoken and apparently endeavoring to tell you the truth, the whole truth and nothing but the truth, or whether he is evasive, sometimes talks in monosyllables, or apparently evades an answer or gives an answer that is not responsive to the question propounded to him, or has a poor memory. All those things you take into account. The only office of a witness in the courtroom is to speak the truth, and the presumption is that the witness is telling you the truth, but that presumption may be repelled by his manner of testifying, by contradictory evidence, or evidence affecting his credibility as a witness. [275] and of all those things you are the sole judges.

If you believe that any witness has come before you on the witness stand here and wilfully testified falsely to some material matter, you have the right to reject that testimony, or perhaps you will find some corroborating testimony in what has been said by some other witness, or you may find such corroborating testimony in circumstances that you have observed during the progress of the trial, so that might modify your judgment as to this particular

witness. There might be some parts of his testimony you would accept and some parts you would reject, and that addresses itself to your own judgment.

Now, you are instructed that the testimony of one witness is sufficient in most of these criminal cases—I mean and should say, the testimony of one credible witness in these cases, in all cases except treason and perjury, and the Court advises you that there should be corroboration under the first count of this indictment; that is, there should be one witness or two witnesses, or there should be, instead of the second witness, a corroborating circumstance which satisfies your mind beyond a reasonable doubt that is, substantial corroboration of the testimony given by the one witness who appeared before you.

As to counts 2 and 3, one credible witness is sufficient, if you believe him, if you have confidence in the testimony [276] given you. What I mean by credible witness is one in whom you do have confidence, one whom you believe is worthy of your consideration and belief, and that again addresses itself to your good judgment as jurors in this case.

Now, there is another element to be considered here, and that is the element of intent, and it is a very important element. In all criminal charges of this kind, the jury must be able to find a union or joint operation of act and intent on the part of the defendants, or criminal negligence. They must find that beyond a reasonable doubt.

Now, "criminal negligence," that phrase used there in that connection means the doing of a thing recklessly, heedlessly and with a disregard of the consequences. Now, none of you ladies and gentlemen, of course, are able to look into the minds of these defendants and determine with what intent they acted, if you believe they acted as charged in this indictment, but you must take into account all of the evidence and circumstances in the case, and then determine from that with what intent they acted, if you believe they acted as charged in this indictment, remembering that every sane person is presumed to intend the natural and usual consequences of his own deliberate act. However, before you can convict the defendants or either of them, you must be satisfied beyond a reasonable doubt that they acted, if they acted at all, with a criminal intent, and I mean by that an evil intent. [277]

Now, then, there are certain special instructions here that have been offered. Some of them I have rejected because some of them were repetitious and might tend to some confusion on the part of the jurors unless further explained, but I have selected a few of these special instructions, which I believe conform to the law in the case and that you should hear.

One of the chief questions in this case is whether James Rennaker testified falsely as a witness for the defendants Catrino and Reinhard in a trial held in this court on March 13, 1946. It was and is established by the verdict and judgment of guilty

upon that trial that Rennaker's testimony then given was false. You are not at liberty to find that the defense made by Catrino and Reinhard on the former trial was true or that Rennaker in that case testified truthfully, because it is finally determined between the United States and the defendants Catrino and Reinhard that their defense was false and that Rennaker's testimony then given was also false.

If you find that James Rennaker wilfully testified falsely in the trial of Catrino and Reinhard on March 13, 1946, as charged; that he did not believe such testimony to be true; that the defendants knew or believed that the said testimony of Rennaker would be false; that the defendants knew that Rennaker would wilfully testify falsely contrary to his oath, and not believing the testimony to be true; and that the defendants induced or procured Rennaker to give such false testimony, you should find the defendants guilty on Count 1 of the Indictment.

If you find that the defendants, on or about March 13, 1946, caused James B. Rennaker to attend the trial of the defendants Catrino and Reinhard upon a charge of Indian Liquor violation, to be sworn and testify as a witness and to give false testimony, known by the defendants and by said Rennaker to be false, to-wit: testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1945, and there saw an unnamed Mexican purchase a

quantity of wine at the bar and deliver it to one Pat A. Pierre, you should find the defendants guilty on count 2 of the indictment.

Count 3 of the Indictment does not concern defendant Catrino, but does concern defendant Reinhard. If you find that defendant Reinhard, on or about December 7, 1945, solicited the witness Pat A. Pierre to testify that a bottle of wine, which was in fact sold to said Pierre by defendant Reinhard, was sold to said Pierre by a Mexican, and that defendant Reinhard knew or believed that such testimony would be false if given, and offered money to said Pierre to so testify, you should find defendant Reinhard guilty on Count 3 of the indictment.

You are instructed that you cannot find the defendant guilty in this case upon conjectures—it should read the defendants [279] or either of them in this case—guilty upon conjectures, however shrewd, or upon suspicions, however well-grounded, nor upon probabilities, however strong and convincing they may be, but only upon evidence which establishes their guilt beyond a reasonable doubt, that is, upon proof such as logically compels a conviction that the charge is true and the reason for that is that you act on evidence; mere suspicions, probabilities and conjectures are not evidence, they do not rise to the dignity of evidence, and the burden of proof is upon the government in this case to prove the defendants' guilt beyond a reasonable doubt.

You are instructed that if you find that Ren-

naker made a false statement but you have a reasonable doubt as to whether the defendants Sam Catrino and John A. Reinhard caused the same to be made or aided or abetted in the making thereof, you must find the defendants, or either of them, not guilty of the charge contained in counts 1 and 2 of the indictment.

You are instructed that the defendants in this case are not required to prove anything. The burden rests upon the plaintiff, the United States of America, to prove to your satisfaction beyond a reasonable doubt each and every element necessary to constitute the crime as charged in each count of the indictment herein; and if, after considering all of the evidence in the case, together with the presumption of innocence, you have a reasonable doubt of the existence of one or more of [280] these elements, your verdict must be not guilty.

You are instructed that the defendants come into Court protected by the presumption of law that they are innocent of any crime and particularly the crime or crimes charged against them in the Indictment. The defendants are presumed to be innocent until their guilt is established beyond a reasonable doubt. This presumption attends them at every step throughout the entire case, and to its benefits they are entitled in deciding every question of fact. That they have been suspected and charged with the perpetration of crimes does not in any degree tend to show their guilt or remove from them this presumption of innocence which the law

throws about them. The indictment in this case is only a formal written accusation of crime required as an essential preliminary to a trial, but in itself is not any evidence of crime. It is merely a formal charge for the purpose of putting the defendants upon trial and should not influence you in arriving at your verdict, nor should it be allowed to in any way prejudice you against the defendants, but you should determine their guilt or innocence by a careful consideration of all the evidence introduced in the case during the trial.

You are instructed that to this indictment the defendants have pleaded not guilty, and under that plea they deny every material allegation of the indictment against them. No presumption of law is raised against them, but every presumption [281] of law is in favor of their innocence, and in order to convict them of the crimes charged against them every material fact necessary to constitute such crimes must be proven by the government by competent evidence, beyond a reasonable doubt; and if the jury entertain any reasonable doubt upon any fact or element necessary to constitute the crime charged, it is your duty to give the defendants the benefit of such doubt and acquit them.

You are instructed that when two conclusions may be reasonably drawn from the evidence, the one of guilt and the other of innocence, the jury should reject the one of guilt and accept the one of innocence, and in that event should find the defendants not guilty. That is, where two con-

clusions can be drawn as reasonably one way as the other, one pointing to guilt and one to innocence, you, of course, must indulge the presumption of innocence and draw the conclusion of innocence.

You are instructed that before you can find the defendant Sam Catrino guilty under count one of the indictment, the government must establish beyond a reasonable doubt that he procured and caused James Rennaker to testify falsely. This fact must be established by two independent witnesses or one witness and corroborating evidence, and unless this has been done, you must find the defendant Sam Catrino not guilty.

You are instructed that before you can find the defendant John A. Reinhard guilty under count one of the indictment, the government must establish beyond a reasonable doubt that he [282] procured and caused James Rennaker to testify falsely. This fact must be established by two independent witnesses, or one witness and corroborating evidence. Unless this has been done, you must find the defendant John A. Reinhard not guilty.

That refers, as I have shown you, to count one of the indictment.

I have called your attention to the intent.

Evidence has been introduced here as to reputation of certain of the defendants and of two of the witnesses. You know, of course, without my giving you any legal definition of it that good repute, good reputation always goes to ones credit, and the ques-

tion for the jury is to determine whether one of good reputation would or would not be likely to commit such a crime as has been charged against these defendants here. It is for you to analyze that reputation testimony and decide just what weight you are going to give to it under all the circumstances of the case, and you will remember in the same connection that reputation testimony, such as you have heard here, will not override a case made out by the government against the defendants, or either of them, beyond a reasonable doubt.

Now, this testimony has been given as to the reputation of Rennaker and Pat Pierre to the effect that such reputation is bad. Well, of course, that is the contrary of good reputation or good repute, that goes to the bad character and bad reputation [283] of Rennaker and Pierre. It is for you to consider the reputation thus given and all of the circumstances connected with the giving of such testimony, and it is for you to say what weight you are going to give it and just how much it is going to affect your judgment in determining the truth or falsity of the testimony given by Rennaker and Pat Pierre. You must take all those things into account, because there may be circumstances that will show you that in some instances considerable weight should be given, and in other instances not very much.

Now, I think, without going over any further instructions, that I have covered all of the main features of this case, so that you will understand how these rules are to be applied when you go into

the jury room and discuss the evidence. It sometimes happens that the Court enters upon a discussion of the evidence with the jury. That is sometimes called comments by the Court on the evidence. Such a thing is permitted in the Federal Courts, although not in the State Courts. Sometimes the Court does comment, and sometimes not. It seems to me that counsel, these four lawyers in this case who have talked to you for two hours, have gone into pretty nearly every phase of the evidence that you will need to consider, and have reminded you of what you must take into account and discuss when you retire to the jury room, and if I should begin now to talk about some of the evidence, it would be repetitious and I feel very tiring, [284] and I doubt whether it would avail very much in view of these able talks that have been made by the four members of the bar who have engaged in this trial.

You know you ought to, in your discussions, reconcile the evidence in the case. You are bound to find conflicts, and, of course, where you do find conflicts, you must reconcile them if possible. You recall that these two defendants took the stand and entered their denials. Well, there was a time when defendants in criminal cases were not allowed to take the stand. They were required to stand mute. I suppose most of the important changes made in the criminal laws during the past three or four hundred years have been of such nature as to enable the defendant to better protect himself and offer his defense when charged with crime. Now,

I said these two defendants have appeared here and given their testimony. Well, the presumption that they are speaking the truth would apply in the instance of the defendants the same as in the instance of any other witness testifying before the jury, but, of course, in estimating their weight and testimony, you must also take into account the nature of the charge, the seriousness of the charge against the defendants, and what it would mean to them if a verdict of guilty should be returned against them. That is something also for you to consider in weighing the testimony of the defendants, whether you believe they have given you a truthful version of the matters related by them upon the witness [285] stand. However, it is your duty to consider their testimony just the same as you would all other evidence that has been presented to you in the case, and determine from that whether you believe they have been proven guilty, or one of them, or either of them, beyond a reasonable doubt, and you should consider such testimony seriously and conscientiously.

Now, in regard to conflicts, you are bound to find them here. It is your duty to reconcile conflicts in evidence whenever it seems possible for you to do so, but wherever you find or determine that these conflicts appear to be irreconcilable, then you must take the testimony that you consider the most worthy of your belief and give it such weight as you think it ought properly to receive.

Now, it takes twelve of your number to agree on a verdict, and when you retire, you should select

one of your number to act as foreman and he will sign your verdict when you agree.

The exhibits that have been introduced in the case will be given you for inspection and consideration if you so desire, likewise a copy of the indictment, and also forms of verdict will be furnished the jury.

Are the bailiffs sworn?

Clerk: No, your Honor.

Court: Let the bailiffs come forward and be sworn.

(Bailiffs sworn.)

Court: Well, gentlemen, you can now come and meet with [286] the stenographer and make your exceptions to the charge to the jury. You must do it without the jury hearing you, in the presence of counsel for both sides and the Court here.

(The following proceedings were had out of hearing of the jury and in the presence of the Court and counsel for the respective parties:)

Mr. Angland: The government has no exception or objection to the charge given.

Mr. Higgins: We except to that portion of the charge wherein the Court failed to charge the jury that there would have to be some corroborating evidence under count number two, for it is our contention that said count in reality states a charge of subornation of perjury, and the count could not be proven or established without corroborating evidence to support the testimony of James Remaker.

An exception is made to the Court's charge in charging the jury as to count three, in that the charge was given in connection with the charge against Catrino under counts number one and two. It is our contention that the charge to the jury under count three, wherein Catrino is not a defendant, is prejudicial to him in his having a fair trial under counts one and two.

Court: All right, the jury may now retire to deliberate. Court will stand in recess awaiting the verdict. Probably they will want to go to dinner and you will want to go to dinner. [287]

Here, Mr. Walker, are the papers in the case, the indictment and the specific instructions requested. The instructions given are marked with a "V"—no, the instructions given are marked with an "O" and the instructions not given are marked with a "V". You may file them in the case.

Plaintiff's requested instructions given by the Court:

O

PLAINTIFF'S REQUESTED INSTRUCTION
No. 1

One of the chief questions in this case is whether James Rennaker testified falsely as a witness for the defendants Catrino and Reinhard in a trial held in this court on March 13, 1946. It was and is established by the verdict and judgment of guilty upon that trial that Rennaker's testimony then given was false. You are not at liberty to find that the defense made by Catrino and Reinhard on the former trial was true or that Rennaker in that case

testified truthfully, because it is finally determined between the United States and the defendants Catrino and Reinhard that their defense was false and that Rennaker's testimony then given was also false.

Given,

CHARLES N. PRAY,
Judge.

O

PLAINTIFF'S REQUESTED INSTRUCTION
No. 2

If you find that James Rennaker wilfully testified falsely [288] in the trial of Catrino and Reinhard on March 13, 1946, as charged; that he did not believe such testimony to be true; that the defendants knew or believed that the said testimony of Rennaker would be false; that the defendants knew that Rennaker would wilfully testify falsely contrary to his oath, and not believing the testimony to be true; and that the defendants induced or procured Rennaker to give such false testimony, you should find the defendants guilty on Count One of the Indictment.

Given,

CHARLES N. PRAY,
Judge.

Hallock vs. U.S., 185 U.S. 417.

O

PLAINTIFF'S REQUESTED INSTRUCTION
No. 3

If you find that the defendants on or about March 13, 1946, caused James B. Rennaker to attend the trial of the defendants Catrino and Reinhard upon

a charge of Indian Liquor Violation, to be sworn and testify as a witness and to give false testimony, known by the defendants and by said Rennaker to be false, to-wit: testimony that said Rennaker was in the Brunswick Bar at Missoula, Montana, on the late evening of October 20, 1935, and there saw an unnamed Mexican purchase a quantity of wine at the bar and deliver it to one Pat A. Pierre, you should find the defendants guilty on Count Two of the Indictment.

Given,

CHARLES N. PRAY,
Judge. [289]

O

PLAINTIFF'S REQUESTED INSTRUCTION
No. 4

Count Three of the Indictment does not concern defendant Catrino, but does concern defendant Reinhard. If you find that defendant Reinhard on or about December 7, 1945, solicited the witness Pat A. Pierre to testify that a bottle of wine, which was in fact sold to said Pierre by defendant Reinhard, was sold to said Pierre by a Mexican, and the defendant Reinhard knew or believed that such testimony would be false if given, and offered money to said Pierre to so testify, you should find defendant Reinhard guilty on Count Three of the Indictment.

Given,

CHARLES N. PRAY,
Judge.

Defendants' requested instructions given by the Court:

O

INSTRUCTION No.

You are instructed that you can not find the defendant guilty in this case upon conjectures, however shrewd, or upon suspicions, however well-grounded, nor upon probabilities, however strong and convincing they may be, but only upon evidence which establishes their guilt beyond a reasonable doubt—that is, upon proof such as logically compels a conviction that the charge is true and the reason for that is that you act on [290] evidence; mere suspicions, probabilities and conjectures are not evidence; they do not rise to the dignity of evidence, and the burden of proof is upon the Government in this case to prove the defendants' guilt beyond a reasonable doubt.

Given,

CHARLES N. PRAY,
Judge.

O

INSTRUCTION No.

You are instructed that if you find that Rennaker made a false statement but you have a reasonable doubt as to whether the defendants, Sam Catrino and John R. Reinhard, caused the same to be made or aided or abetted in the making thereof, you must find the defendants, or either of them, not guilty of the charge contained in Counts One and Two of the indictment.

Given,

CHARLES N. PRAY,
Judge.

O

INSTRUCTION No.

You are instructed that the Defendants in this case are not required to prove anything. The burden rests upon the Plaintiff, the United States of America, to prove to your satisfaction, beyond a reasonable doubt, each and every element necessary to constitute the crime as charged in each Count of Indictment herein and if, after considering all of the evidence in the case, together with the presumption of innocence, you [291] have a reasonable doubt of the existence of one or more of these elements, your verdict must be not guilty.

Given,

CHARLES N. PRAY,
Judge.

O

INSTRUCTION No.

You are instructed that the Defendants come into Court protected by the presumption of law that they are innocent of any crime and particularly the crime or crimes charged against them in the Indictment. The Defendants are presumed to be innocent until their guilt is established beyond a reasonable doubt. This presumption attends them at every step throughout the entire case, and to its benefits they are entitled in deciding every question of fact. That they have been suspected and charged with the perpetration of crimes does not in any degree tend to show their guilt or remove from this presumption of innocence which the law throws about them. The indictment in this case is

only a formal written accusation of crime required as an essential preliminary to a trial, but in itself is not any evidence of crime. It is merely a formal charge for the purpose of putting the defendants upon trial and should not influence you in arriving at your verdict, nor should it be allowed to in any way prejudice you against the defendants, but you should determine their guilt or innocence by a careful consideration of all the evidence introduced in the case during [292] the trial.

Given,

CHARLES N. PRAY,
Judge.

O

INSTRUCTION No.

You are instructed that to this Indictment the defendants have pleaded not guilty, and under that plea they deny every material allegation of the Indictment against them. No presumption is raised by the law against them, but every presumption of law is in favor of their innocence, and in order to convict them of the crimes charged against them every material fact necessary to constitute such crime must be proven by the government by competent evidence, beyond a reasonable doubt; and if the jury entertain any reasonable doubt upon any fact or element necessary to constitute the crime charged, it is your duty to give the defendants the benefit of such doubt and acquit them.

Given,

CHARLES N. PRAY,
Judge.

O
INSTRUCTION No.

You are instructed that when two conclusions may be reasonably drawn from the evidence, the one of guilt and the other of innocence, the jury should reject the one of guilt and accept the one of innocence, and in that event should find the [293] Defendants not guilty. That is where two conclusions can be drawn as reasonably one way or the other, one pointing to guilt and one to innocence, you, of course, must indulge the presumption of innocence and draw the conclusion of innocence.

Given,

CHARLES N. PRAY,
Judge.

O
INSTRUCTION No.

You are instructed that before you can find the Defendant Sam Catrino guilty under Count One of the Indictment, the Government must establish beyond a reasonable doubt that he procured and caused James Rennaker to testify falsely. This fact must be established by two independent witnesses or one witness and corroborating evidence, and unless this has been done you must find the defendant Sam Catrino not guilty.

Given,

CHARLES N. PRAY,
Judge.

O
INSTRUCTION No.

You are instructed that before you can find the Defendant, John A. Reinhard, guilty under Count

One of the Indictment, the Government must establish beyond a reasonable doubt that he procured and caused James Rennaker to testify falsely. This fact must be established by two independent witnesses, or one witness and corroborating evidence. Unless this has been [294] done you must find the Defendant, John A. Reinhard, not guilty.

CHARLES N. PRAY,
Judge.

Defendants' requested instructions not given by the Court:

V.

INSTRUCTION No.

You are instructed that a Defendant charged with crime is presumed to be innocent and that as the Defendants come into Court presumed to be innocent and that presumption protects them until such time when the jury shall believe from the evidence beyond a reasonable doubt that the defendants are guilty as charged in the Indictment.

The guilt of an accused is not to be inferred because the facts proved are consistent with his guilt but on the contrary, before there can be a verdict of guilty against these two Defendants, or either of them, under any of the Counts in which they are charged, you must believe beyond a reasonable doubt that the facts proved are not consistent with their innocence, and if two conclusions can be rea-

sonably drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

Not Given.

CHARLES N. PRAY,
Judge. [295]

V.

INSTRUCTION No.

You are instructed that no juror should surrender his deliberate, conscientious conviction merely at the behest of a majority of jurors or for the sake of unanimity, but as long as any juror has a reasonable doubt as to the guilt of the Defendants, or any of them, such juror should continue to vote not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that in every criminal or public offense there must be a union or joint operation of act and intent and both of these elements, viz.: act and intent must not only exist but must be proven in this case to the satisfaction of your mind beyond a reasonable doubt, else you must find the Defendants not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that at no time does it devolve upon the Defendants to prove their innocence or even to raise a reasonable doubt in your minds as to their guilt, but the burden [296] is at all times upon the United States of America to prove beyond a reasonable doubt that the Defendants are guilty as charged in the Indictment, and, if that has not been done, your verdict must be not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that the Defendants have the right to present testimony as to the reputation of the witness, Pierre, and if you find that his reputation for truth and veracity is bad, you must take that into consideration in arriving at your verdict.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that the defendants have the right to present testimony as to the reputation of the witness, Rennaker, and if you find that his

reputation for truth and veracity is bad, you must take that into consideration in arriving at your verdict.

Not Given.

CHARLES N. PRAY,
Judge. [297]

V.

INSTRUCTION No.

You are instructed that in Counts I & II that the Government must establish the falsity of the statement alleged to have been made by the Defendant, Rennaker, under oath, by the test of two independent witnesses or one witness and corroborating circumstances. Unless that has been done, you must find the Defendants not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that to convict any of the Defendants charged in this Indictment, probable or credible evidence is not enough.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that evidence of previous good character is competent in favor of the Defendants as tending to show that they would not be likely to commit the crimes charged against them, and if, after a careful and thorough consideration of all of the evidence in this case, including that bearing upon their good character, you entertain a reasonable [298] doubt of the Defendant's guilt, then you must acquit him.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that a conviction cannot be had upon the testimony of an accomplice unless he is corroborated by other evidence which, in itself, and without the aid of the testimony of the accomplice tends to connect the Defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof; and in this connection you are further instructed that if you believe from the evidence that James Rennaker did testify falsely as charged in the indictment, you are instructed as to this feature of the case, that James Rennaker and John Reinhard were accomplices.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that a witness who is false in one part of his testimony is to be distrusted in others.

Not Given.

CHARLES N. PRAY,
Judge. [299]

V.

INSTRUCTION No.

You are instructed that a witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his creditability.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that 2 forms of verdict will be handed you and you will sign the form that is appropriate after you have deliberated and determined whether the Defendants are or are not guilty. You

have a right under the facts to return either a verdict of guilty or not guilty as you view the evidence and think it should be.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that there is testimony on behalf of the Defendants that their reputation for honesty and integrity [300] in the community in which they live is good. If you believe from the testimony that prior to the time of the alleged offense for which the Defendants are now on trial each bore a good reputation in the community where he resided for truth, honesty and integrity, that is a circumstance in their favor which you must consider with all facts and circumstances in evidence. It is competent testimony and you should take it and consider it with all the other evidence and give it such weight as appeals to your judgment.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that a reasonable doubt is what the term implies. It is a doubt founded upon reason. It is a doubt that arises from the evidence

and its condition; something in the evidence that creates a doubt in your mind. It does not mean every conceivable doubt. It doesn't mean a doubt that may be purely imaginary, fanciful, or arising from caprice or speculation. It simply means an honest doubt that appeals to reason and is founded upon reason, and, if after considering the evidence in this case you have such a doubt in your mind that would cause you to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt. [301] You will then resolve that doubt in favor of the Defendants and find them not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that the burden is on the government to prove the essential facts set out in this Indictment to your satisfaction beyond a reasonable doubt before you can lawfully return a verdict of guilty in the case, and that burden never shifts.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that when a witness has been contradicted by showing that he made inconsistent statements at another time, the previous contradictory statements are not evidence of the facts related in such statements. The fact that the witness has made contradictory statements may be considered by you in considering the credibility of the witness, but the subject matter of the previous contradictory statements inconsistent with the testimony on the trial cannot be considered as evidence of the facts stated in such previous statements.

Not Given.

CHARLES N. PRAY,
Judge. [302]

V.

INSTRUCTION No.

You are instructed that where, in the consideration of the evidence in a criminal case, the jury concludes that upon such evidence it cannot say whether the Defendants are guilty or not guilty, then it is the duty of the jury to return a verdict of not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that under the First and Second Counts of the Indictment, each essential element of the case must be proven by the testimony of two witnesses, or of one witness and corroborating circumstances, and it is not sufficient where the testimony of two witnesses are relied upon that each of the witnesses testified to different elements of the crime charged, but the law required in such case that two witnesses testify to each of the essential elements of the crime charged or that one witness has testified directly to such element and that the testimony of such witness is corroborated by the circumstances.

It is therefore necessary for you to understand what is meant by the word "corroborate" and "corroboration." To corroborate means to strengthen; to make certain; to add [303] weight or credibility to a thing; to confirm by additional security; to add strength. Evidence which does any of these things is evidence which corroborates, and is corroborating evidence. It does not mean facts which, independent of the evidence being corroborated, will warrant a conviction, but it is evidence which tends to prove the Defendant's guilt independent of the evidence which is corroborated.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that when a witness has been contradicted by showing that he made inconsistent statements at another time, the previous contradictory statements are not evidence of the facts related in such statements. The fact that the witness has made contradictory statements may be considered by you in considering the credibility of the witness, but the subject matter of the previous contradictory statements inconsistent with his testimony on the trial cannot be considered evidence of the facts stated in such previous statements.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

You are instructed that where, in the consideration of [304] the evidence in a criminal case, the jury concludes that upon such evidence it cannot say whether the Defendants are guilty or not guilty, then it is the duty of the jury to return a verdict of not guilty.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

Now a witness is presumed to speak the truth, but this presumption however may be repelled by the manner in which he testifies, by the character of his testimony, or his motives, or by contradictory evidence, and the jury are the exclusive judges of his credibility. That means when a witness is first sworn and goes on the witness stand you are to believe, as we all do, that he will obey his oath and will tell the truth. That isn't an absolute presumption because we know some people don't tell the truth; so the law says the presumption may be repelled by the manner in which he testifies.

Not Given.

CHARLES N. PRAY,
Judge.

V.

INSTRUCTION No.

A witness false in one part of his testimony is to be distrusted in others. That is, if you believe that any witness came on the witness stand and testified falsely as to any [305] material fact in the case, you should distrust all the other evidence that that witness gives.

Not Given.

CHARLES N. PRAY,
Judge. [306]

In the District Court of the United States,
District of Montana

United States of America,
State of Montana—ss.

I, John J. Parker, Official Court Reporter in the District Court of the United States, District of Montana, do hereby certify that the foregoing annexed transcript, consisting of 264 pages, exclusive of this certificate, is a true and correct record of the proceedings had in criminal Action No. 6784, United States of America, Plaintiff, vs. Sam Catrino, John A. Reinhard and Lester R. LaValley, Defendants, before the Honorable Charles N. Pray, sitting with a jury, in the Federal Building at Missoula, Montana, on July 7th, 8th and 9th, 1948.

/s/ JOHN J. PARKER,
Official Court Reporter.

[Endorsed]: Filed Aug. 9, 1948. [307]

Thereafter on August 9, 1948, an Order extending time within which to file and docket Record on Appeal in the Circuit Court of Appeals was duly filed herein, being in the words and figures following, to-wit: [308]

[Title of District Court and Cause.]

ORDER

Upon reading the application of counsel for the Defendant, Sam Catrino, for additional time within

which to file and docket the record on appeal in said cause, and the Court being fully advised in the premises, the time within which to file and docket the said record on appeal is hereby extended to the 1st day of September, 1948.

Dated Aug. 9, 1948.

CHARLES N. PRAY,
Judge.

Entered and noted in Civil Docket August 11, 1948.

[Endorsed]: Filed Aug. 9, 1948. [309]

Thereafter on August 9, 1948, Designation of Contents of Record was duly filed herein, being in the words and figures following, to-wit: [310]

[Title of District Court and Cause.]

DESIGNATION

Comes now the defendant, Sam Catrino, and designates the parts of the record in the United States District Court to be contained in the record on appeal, as follows:

1. The indictment on file in this court; the motion of the defendant, Sam Catrino, to dismiss all counts in the indictment, and the minute entry of the court overruling the motion. The oral motion of the defendant to strike count number 2 from the indictment, and the minutes of the court denying the motion. Motion of the defendant to sever count 3 from the indictment, and the minute entry of the court denying the motion; the request to the court to compel the government to elect on which count

it desires to proceed, namely: count 1 or 2, and the minute entries of the court denying the motion, and likewise the motion of the defendant to grant separate trials and the minute entry of the court denying the request; the reporter's transcript of all the testimony had at the trial, including the instructions given and refused. Plaintiff's exhibit, 1, verdict of the jury, the judgment of the District Court, Notice of Appeal; this designation of defendant and appellant's statement of the points; the order of the court relating to the transmission of the original exhibit to the Circuit Court of Appeals.

J. D. TAYLOR,
GEORGE F. HIGGINS,
Attorneys for Defendant.

Service of the foregoing designation admitted this
9th day of August, 1948.

HARLOW PEASE,
EMMETT C. ANGLAND,
Attorneys for Plaintiff.

[Endorsed]: Filed August 9, 1948. [311]

Thereafter on August 14, 1948, Stipulation as to Contents of Record was duly filed herein, being in the words and figures following, to-wit: [312]

[Title of District Court and Cause.]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the record on appeal shall consist of the papers and documents referred to in the designation of the Defendant and Appellant filed herein.

Dated this 4th day of August, 1948.

J. D. TAYLOR,

GEORGE F. HIGGINS,

Attorneys for Defendant and

, Appellant.

HARLOW PEASE,

EMMETT C. ANGLAND,

Attorney for Plaintiff.

[Endorsed]: Filed August 14, 1948. [313]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable The United States Circuit Court of Appeals for the Ninth Cir-

cuit, that the foregoing two volumes consisting of 313 pages, numbered consecutively from 1 to 313, inclusive, constitute a full, true and correct transcript of all portions of the record in Case No. 6784, United States of America vs. Sam Catrino, et al., required to be incorporated therein by designation of the appellant and by stipulation of the parties, except "The oral motion of the defendant to strike count number 2 from the indictment, and the minutes of the court denying the motion", of which there is no record, as the record on appeal therein, as appears from the original records and files of said Court in my custody as such Clerk.

I further certify that, pursuant to the order of said District Court, I transmit herewith, as a part of the record on appeal, original exhibit No. 1, introduced at the trial of said cause.

I further certify that the costs of said transcript amount to the sum of Thirty-five & 30/100 Dollars (\$35.30) and have been paid by the appellant.

Witness my hand and the seal of said Court at Helena, Montana, this 21st day of August, A.D. 1948.

(Seal) /s/ H. H. WALKER,
Clerk, U. S. District Court,
District of Montana. [314]

[Endorsed]: No. 11988. United States Court of Appeals for the Ninth Circuit. Sam Catrino, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed August 26, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Cause No. 11988

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

SAM CATRINO, JOHN A. REINHARD, and
LESTER R. LaVALLEY,
Defendant and Appellant.

ADOPTION OF STATEMENT OF POINTS

Comes now the Defendant Sam Catrino and Appellant Sam Catrino and adopts the Statement of Points upon which he intends to rely on the appeal, which was heretofore filed in the District Court of

the United States in and for the District of Montana, and appears as a part of the transcript of record.

:/
/s/ J. D. TAYLOR,
/s/ GEORGE F. HIGGINS,
Attorneys for Defendant and
Appellant.

(Acknowledgment of Service attached.)

[Endorsed]: Filed August 30, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

**STIPULATION AS TO PRINTED RECORD IN
THE CIRCUIT COURT OF APPEALS**

It is hereby stipulated and agreed that the printed Transcript of Record on Appeal in the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, shall consist of the papers and documents referred to in the Designation of the Defendant and Appellant, filed in the District Court; and in addition thereto shall contain: The Order of the lower Court extending the time to file the Record on Appeal and docket the same in the Circuit Court of Appeals; the Order for the Transmission of Exhibit Number One (which Exhibit Number One is not to be printed in the printed

transcript of record); the Adoption of Statement of Points of Defendant and Appellant; and this Stipulation as to printed record on appeal.

Dated this 25th day of August, 1948.

/s/ J. D. TAYLOR,

/s/ GEORGE F. HIGGINS,

Attorneys for Defendant and
Appellant.

/s/ HARLOW PEASE,

/s/ EMMETT C. ANGLAND,

Attorneys for Plaintiff.

[Endorsed]: Filed August 30, 1948. Paul P.
O'Brien, Clerk.